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ESSAYS AND ADDRESSES



UNIV. OF
CALIFORNIA

John J. Smith

ESSAYS AND ADDRESSES

BY
EDWIN BURRITT SMITH
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UNIV. OF
CALIFORNIA

CHICAGO
A. C. McCLURG & CO.
1909

Copyright
By EMMA DAUMAN SMITH
1900

Published May 15, 1900

TO VIRGIL
ALPHEUS

The Lakeside Press
R. R. DONNELLEY & SONS COMPANY
CHICAGO

TO
Carlta and Otis Smith
THIS MEMORIAL OF THEIR FATHER
IS AFFECTIONATELY
DEDICATED

334257

PREFACE

THE editors of this book believe that the trenchant words of Edwin Burritt Smith in support of the great causes which were dear to him, deserve to be preserved in this permanent form. In the development of the present marked interest in civic affairs, Mr. Smith was a pioneer whose influence was far-reaching. His lifelong study of municipal government, his earnest thought about the problems of the nation, his intimate knowledge of stirring passages in the history of Chicago and Illinois, above all his firm grip upon abiding principles, give to these papers enduring value. Nowhere have these principles been formulated more clearly or more forcibly; never has their application to the complex relations of government been set forth with greater discernment.

Though written at different times and prepared for widely varying audiences, these papers supplement and support one another, and taken together they form a consistent whole. They make a fitting memorial of a singularly self-sacrificing, courageous, and public-spirited man.

In some cases passages have been omitted that repeat ideas expressed elsewhere in the book. There has been no other editorial revision.

GEORGE LABAN PADDOCK

ALBERT HARRIS TOLMAN

FREDERICK WILLIAM GOOKIN

EDITORS.

APRIL 20, 1909.

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EDWIN BURRITT SMITH

AN APPRECIATION

EDWIN BURRITT SMITH was born in Spartansburg, Pennsylvania, January 18, 1854. The circumstances of his early years are set forth by himself in the paper "Timothy Smith, Pioneer," contained in the present volume,—a relation of leading incidents in the life of his paternal grandfather.

In a quite obvious sense both grandfather and grandson were pioneers. Each was gifted by nature with great courage and inflexible perseverance. Each after his own method, in his own day and generation, trained himself to move in advance,—to move with the few, with the many, or alone. Each was able and willing to observe and report to his fellow men from heights above the level of ordinary experience; and each to the best of his ability performed that service to the end of his life.

Left an orphan at the age of five, Mr. Smith was taken by his grandfather, in the following year, to a farm near Cerro Gordo, in Piatt County, Illinois, where the indomitable old man passed his declining years until his death, which occurred in the Spring of 1865. His son Charles—Edwin Burritt's uncle—having died in 1864, the lad was now thrown very much upon his own resources.

After 1865 until he was eighteen, he worked during the harvest seasons for different farmers in the neighborhood. This was no light occupation but heavy outdoor work, sometimes with responsibilities of management. Even at

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that early day it was his habit not to decline responsibility. It is said of him as a boy that he was studious and considerate of others; never greatly interested in the sports of boyhood; liking for recreation to read rather than to play. At intervals in those years of stress, in winters when harvest work and its wages were not to be had, he was heading the bright pupils of his own age in the free schools of Cerro Gordo. It is said of him that he seemed to feel a sense of leadership, and an impulse to help others. And yet in those early days of routine in school and field work there came a critical moment—a turning point—when as has happened to other bright boys in like trials, help and guidance came to him from the sympathy of an observant friend. Such a friend was P. H. Harris, principal of the public school at Cerro Gordo. This gentleman, attracted by the ability and diligence of his pupil, directed his studies, lent him the right books, and encouraged him to aspire to higher discipline beyond. Perhaps that encouragement was the cause of the pupil's determination to enroll himself at Oberlin College upon closing his studies at Cerro Gordo.

Leaving Cerro Gordo Mr. Smith proceeded to Oberlin College in 1874 and there took some special courses in that year and in 1875. Later in 1875 he taught in the public schools of Spartansburg. In September, 1876, he had become principal of the high school at that place; and in that office he remained until his removal to Chicago. By December, 1878, he had established himself in Chicago as a regular student in the Union College of Law, now the Law School of the Northwestern University. Of his early stu-

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dent experiences in Chicago he writes: "I get up at 6:45 A. M. and read, recite, and teach in all from fourteen to fifteen hours a day." The teaching was in Commercial Law at one or two business colleges. In another letter written early in February, 1879, he says: "I am doing a great deal of reading in the United States Supreme Court Reports. It is not in the course, but I am interested in knowing all about a question of great importance, and am going through it. I have read, since the middle of December, nearly one hundred decided cases, covering nearly one thousand pages on this single subject. There is nothing like having a few mastered subjects behind, if one wishes to go through a portion of the many ahead."

Mr. Smith was graduated at the Union College of Law in 1879, with the degree of Bachelor of Law. He now determined to apply the savings of his Chicago work, some hundreds of dollars, to a post-graduate course at the Yale Law School. From Philadelphia on his way East, September 30, 1879, he wrote to a relative: "I am on my way to take the post-graduate course at the law department of Yale College. I wanted to do it all the time, but until recently did not think I could do so. I am sorry that this prevents my visiting you this Fall. Now, I will not be able to see you until some time next Summer, when I am able to return to Chicago, to go into James L. High's office. What time I can get from my work I am to spend with the books. I can easily make expenses, which will be five hundred dollars for the course. My year there and the Yale degree will be worth more than that to me. The fact that I have not a complete college course makes me

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anxious to make my legal education as thorough as possible. . . . And here I will say for your sole benefit that I am more and more impressed with the feeling that I must prepare myself to bear higher responsibilities in my profession than come to most of its members. It may be fancy, but I feel that an overruling Providence has had much to do in pointing out my course, and opening up the way thus far. At any rate, I feel that I must do all I can and leave the end to a higher power. I think I will be satisfied, if after doing my best, my success is a moderate one; but a moderate success without great effort would lead me to blame myself for not having made the effort."

At New Haven in October, 1879, he says in another family letter: "I will return to Chicago next Fall with a better legal education than ninety-nine in a hundred have to start with. It will be worth a thousand dollars to me to hold the M. L. degree of Yale, even if I know no more for it, but I *will* know more.

"The work is of the most thorough, practical, and interesting kind. Some days I have to read over one hundred pages. I recite to five professors, several of them very eminent men. In the post-graduate course there are few of us, and we enjoy the advantage of having the professors' personal instruction; mostly in their own private studies at their houses. They lend us their books, and we are a privileged class in the school. We have splendid library facilities. I can have a dozen books from the various libraries all the time. So, as Tom Sawyer says about Sunday school, 'I am just wallowing in books.'"

At the close of his post-graduate course at Yale, in 1880,

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Mr. Smith took the degree of Master of Laws, and returned to Illinois. He was admitted to the bar of that State by the Supreme Court in 1881; and at once began practice in Chicago. During large parts of each of the years 1883 to 1887 inclusive, he was engaged in editorial work for a large and well established law publishing house in Rochester, upon annotated editions of the New York Common Law and United States Supreme Court Reports. In 1887-1894 he was the official reporter of the Appellate Court of Illinois, First District. His work appears in Volumes 21-47 of the Reports of that Court. Beside these important avocations he accomplished much professional work in general law practice. In 1888, 1889, 1890, Mr. Smith was a law partner of Mr. Thomas Dent, a practitioner of large experience and very high standing at the Chicago bar.

One of Mr. Smith's many fields of activity, was the Armour Mission Sunday School, established by Plymouth Church on Armour avenue. He was its superintendent from the early part of 1889 to the end of 1893, when the pressure of rapidly enlarging duties elsewhere required him to resign the office. A letter of the President of Armour Institute to him at this time is of interest here:

MY DEAR FRIEND:

The letter you have sent to Mr. Armour, in connection with the one which you have kindly sent to me, gives me only the slightest opportunity to express to you the gratitude of Armour Mission and Institute, and suggests to me how many hearts and minds who have already gone out from us into the world's work would love to unite with us in expressing our thankfulness to you.

EDWIN BURRITT SMITH:

I cannot look upon your work here at Armour Mission, as I sit to-day in the large building of Armour Institute, and look forward with so much anxiety and pride into the future, without being more than ever sure that your faithful hand and earnest heart have worked mightily toward the shaping of these supreme possibilities. Just to-day, we received a telegram from San Francisco asking us for all printed matter that might help toward the development of a similar institution in that city; and as I went through the large accumulation of material from which the lines of this enterprise were chosen, I found that the letters and documents most referred to, and most significant for our use, bore your beloved name, and are preserved among my guiding influences. Only I, myself, can ever know how certainly this Institute is the child of Armour Mission, and how surely that parentage was made possible by your own devotion to high literary and scientific ideas. When I think of this community as it was when you came here to begin your work with Dr. Hollister, and know how surely it is fortified for education and for righteousness, I often wonder if the men who work in the Mission can understand how grand is the success, and how noble and thorough was the plan.

It is useless to say, though it is quite significant that it is true, that we realize how much of sacrifice and care you have given to this work, and how certainly nothing but our gratitude, the immeasurable and enriched future of these children, and the blessing of Almighty God may compensate you for your work. Of the treasures in the lives of these young people to which you made such additions, the future will speak. You may be sure we implore the blessings of God upon you.

Faithfully yours,

F. W. GUNSAULUS.

In July, 1894, Mr. Smith was appointed to a professorship in the Law School of the Northwestern University, and for several years he gave regular courses of lectures in that school upon the law of Real Property. These lec-

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tures not only established for him a high reputation as a teacher of law, but secured for the lecturer the enduring attachment of his students.

Mr. Smith was a schoolmaster who measured fully up to the standard which a great English professor, John Tyndall, elevated before his students in these words:

If there be one profession in England of paramount importance, I believe it to be that of the schoolmaster; and if there be a position where selfishness and incompetence do most serious mischief by lowering the moral tone and exciting irreverence and cunning, where reverence and noble truthfulness ought to be the feelings evoked, it is that of the principal of a school. For, no matter what means of culture may be chosen whether physical or philological, success must ever mainly depend upon the amount of life, love and earnestness which the teacher himself brings with him to his vocation.

Mr. Smith was elected a member of the Chicago Literary Club on March 18, 1889, and from that date until declining health compelled him to forego the pleasure, was a frequent attendant at the meetings of the club. This was almost the only relaxation he allowed himself. The stimulating intercourse with congenial spirits that he could always count upon at these meetings made him loth to miss even one of them; and he, on his part, contributed much to the interest and good fellowship of the Monday evening gatherings. His election to the Presidency of the club, an office held by him during the season of 1901-1902, he regarded as a high honor. It was well deserved, for no other member had a warmer feeling for the club or did more to promote its welfare. The papers read by him before the club were seven in all.

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"The Negro as a Citizen." March 31, 1890.

"American Sovereignty." April 27, 1891.

"George William Curtis." November 21, 1892.

"At the Parting of the Ways: A Study in National Policy." January 20, 1896.

"A Retrospect of the Campaign and of the Causes Which Led to It." November 9, 1896.

"Timothy Smith, Pioneer: A Sketch of a Plain Man." January 23, 1899.

"The Confused West: A Literary Forecast." (Inaugural Address as President.) October 7, 1901.

In an address before the Illinois General Congregational Association of Oak Park in May, 1900, Mr. Smith maintained the obligations of the Decalogue as binding alike upon the nation and its citizens. On the same occasion he said:

It is the method of democracy to reject authority and appeal to the people. The task is to bring the crowd to the plane of moral responsibility. A crowd we are, and a crowd we shall remain. Democracy means government by the crowd, and the largest liberty of voluntary combination of its units with lesser groups within the greater. Nothing short of complete regeneration of the crowd can be the goal of social evolution. The man who would raise the morals of the crowd must sternly decline to participate in its immoral actions even when professedly for moral ends. . . . If the citizens are to observe moral laws, a nation, which is, after all, but an expression of their ideals, must not be unmoral. Morals spring from the relations of man in society. What is true of one or two acting together in relation to others is true of the nation. There is but one moral law, and it is of like application upon the crowd and its units.

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Over against such convictions in the mind of such a man projects of conquest and exploitation of "inferior races" could make no headway.

Much has been written and spoken in recent times upon the subject of American world power, so-called. There are at least two kinds of American world power. One is shown in the creation of overwhelming naval and military forces. The other is different. Of the latter it has been asserted in a public address to his fellow citizens by Mr. William J. Bryan:

For more than a century this nation has been a world power. For ten decades it has been the most potent influence in the world. Not only has it been a world power, but it has done more to affect the politics of the human race than all the other nations of the world combined. Because our Declaration of Independence was promulgated, others have been promulgated; because the patriots of 1776 fought for liberty, others have fought for it; because our Constitution was adopted, other constitutions have been adopted.

The growth of the principle of self-government planted on American soil has been the overshadowing political fact of the nineteenth century. It has made this nation conspicuous among the nations, and given it a place in history such as no other nation has ever enjoyed. Nothing has been able to check the onward march of this idea. I am not willing that this nation shall cast aside the omnipotent weapon of truth to seize again the weapons of physical warfare. I would not exchange the glory of this republic for the glory of all the empires that have risen and fallen since time began.

For Mr. Smith, as for other Americans seeking American standards of political duty and power, such standards exist in our Declaration of Independence. In the school

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of public opinion in which he was so convinced a disciple and teacher, that document had long been revered as a sacred book wherein are inscribed the symbols of a public religion—a religion of human equality and equity.

By convention after convention the substance of that paper has been reaffirmed in the organic law of many of our American States; and at last after great sacrifice, hesitation and civil conflict, the spirit and effect of it have been written into the Constitution of a reunited nation.

This busy man found time for many public activities. It appears convenient in this place to mention the following instances collectively.

In 1884 he was Secretary of an Independent Republican State Committee, which supported Grover Cleveland for the Presidency under a banner bearing the motto, somewhat strange at that early day: "Public office is a public trust." In 1886 he was President of the Illinois Tariff Reform League. In the presidential campaign of 1888 he again supported Mr. Cleveland, and engaged with activity in the work of clubs organized for promotion of Civil Service Reform and Tariff Reform.

In the campaign of 1892 he was once more prominent in support of Mr. Cleveland. He also in that year took part in Municipal Reform movements in the State of Illinois, and was Democratic candidate for Representative in Congress from his Congressional district. In 1895 he was a leader in organizing the Municipal Voters' League, and during that and succeeding years took a

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prominent part in its work. In 1896 he was Chairman of the Illinois Sound Money League and a member of the National convention which nominated Messrs. John M. Palmer and Simon B. Buckner upon what was known as the "Gold Democratic Platform"; and he served upon the national committee of that organization in the campaign. He was also active in the Hyde Park Protective Association, a local reform organization.

He was for many years an honored and useful member of the American Bar Association. He served for a considerable period as member of the Illinois Board of Commissioners for Uniform State Legislation, appointed by the Governor of the State.

Mr. Smith was the efficient leader of the Anti-Imperialist movement in Chicago. On October 27, 1898, he spoke before the Sunset Club of this city on the subject, "National Expansion Under the Constitution." He stoutly opposed the imperialistic ideas that were already finding expression, and asked the frank question:

"Shall we permit despotic power to be set up at Washington, there to compete with delegated authority for final supremacy?"

He was the chairman of the committee which arranged for the first general organized expression of anti-imperialist sentiment in Chicago, the Liberty Meeting held at Central Music Hall on Sunday afternoon, April 30, 1899. The meeting was an inspiring one. President Henry Wade Rogers, of Northwestern University, was its chairman; the able address of Mr. Smith on that occasion is presented in this work.

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For nearly two years, from 1889 to 1901, he was chairman of the executive committee of the American Anti-Imperialist League, which had its main office in Chicago. At the time of his death he was a Vice-President of the present National Anti-Imperialist League, having its main office in Boston. The cause of anti-imperialism was an expression of his most cherished political convictions. A large number of the papers in the present collection are expositions of that cause in some of its many points of view.

Mr. Smith was a member of the Young Men's Christian Association for over twenty years; he acted upon its Chicago Board of Directors from 1884 until disabled by his last illness, and was a member during that period of several important standing committees. In 1888 he was one of a special committee empowered to revise the organic law of the Association. The work of this committee led the way to general reorganization upon the present metropolitan plan; an important reform followed by great and lasting gains in Association membership. For five years he was a member of a committee of twenty-one representative business men appointed by the International Convention to "make a deliverance relating to the general polity of the Association in North America." He was in the minority of that committee. He presented the minority report and spoke in its advocacy before the International Convention held at Buffalo in May, 1904. The opening words of his address on that occasion appear below. They were characteristic, and stated what he deemed the vital question before the convention:

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Shall the independent and voluntary coöperation of the Associations give place to a measure of control by the International Committee of them and their work? Or in other words, shall the work proceed on the basis of co-operation, or on the basis of authority? The question is as old as history. It has arisen in Church, in State, in every form of endeavor involving many men. That it should arise in this brotherhood was inevitable. It should be frankly presented and earnestly considered by this convention. There is no field for compromise between the two fundamental views presented by the reports. The International Committee must continue to be the servant of the Associations or it must be their master. It cannot be both their servant and master. The two roles do not go together. Democracy and absolutism are not Siamese twins.

In August, 1903, upon the advice of his physicians, Mr. Smith left Chicago for a several weeks' vacation in Wisconsin. In May, 1904, as already mentioned, he was actively present in the International Convention of the Young Men's Christian Association at Buffalo. In August, 1904, he visited a dear friend, the Hon. Carl Schurz, at his home near Bolton Landing, Lake George, remaining about a week in that historic region. At this time Mr. Schurz was engaged in writing his interesting and authoritative work of history and autobiography, since published. From Bolton Landing Mr. Smith went on to Greensboro, Vermont, to abide for a time at the cottage of his pastor and Chicago neighbor, the Reverend Frederic E. Dewhurst. At Pittsfield he remained for some days with Mr. Ernest Hitchcock, his former editorial associate, and other friends, and returned to Chicago in September, 1904.

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In February, 1905, again upon medical advice, he spent about a month in a sanitarium at Battle Creek, Michigan. In April of that year, once more upon medical advice, Mr. Smith set out from Chicago with a friend, intending to make a somewhat extensive tour in New Mexico, Arizona, California, and the Hawaiian Islands. Much had been hoped for as the result of this experiment. But on reaching Los Angeles he found himself no better, and paused a few days for further medical conferences; then decided to return to Chicago. With the friend who had attended him on the passage overland, he reached home August 1, 1905.

In his last illness Mr. Smith enjoyed reading when strength permitted, and at other times he listened with interest to readings by friends at his bedside. Among the volumes read from at those times, beside periodicals, were Mr. John Morley's *Life of Mr. Gladstone*, the *Letters of James Russell Lowell*, "*Bright Days in Merry England*," *The Life and Letters of Robert Louis Stevenson* (Hendley). He seemed especially attracted by the Samoan letters of Stevenson and the story of that gifted author's last days among the simple-hearted islanders at Apia. If he felt some parallel, bodily or spiritual, between those sufferings and his own, he made no mention, nor was there mention by others. In those days of privation, calmly hoping against hope, he writes of himself to a friend whom he had met in Arizona, "I had a relapse in January, and have since been worse than when I saw you. While I am now very weak, I am beginning slowly to build up."

In another letter written to Professor Charles Eliot

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Norton March 7, 1906, he refers to some of the features of his case to add: "The outlook has decidedly improved. While it is idle to predict after so long an illness such as mine, I have never been more hopeful of a complete recovery and within a reasonable time."

In January, 1906, an invitation was received by Mr. Smith from the President of Harvard University to deliver a course of lectures in the Spring of that year upon the Edwin L. Godkin foundation, concerning a subject within Mr. Smith's field of research and exposition. Mr. Smith had known Mr. Godkin well during the latter's directorship of the New York "Nation," a period in which, according to the estimate of Mr. James Bryce, that paper had become not only the best weekly in America but the best in the world. It was with great regret that Mr. Smith at the last moment decided that his failing condition made it necessary to decline the honor.

In the latter years of Mr. Smith's professional life there had slowly emerged at divers times from divers remote sources a baffling and most intricate controversy, or mass of controversies, between the city of Chicago and several street railways or traction companies occupying for their passenger traffic large portions of many city streets. The facts and law of the contention were to ordinary persons utterly beyond comprehension. Apparently unsolvable, this conflict had too long occupied the attention of legislative and judicial magistrates, National and State. There lay behind it a bulky literature,—statutes, ordinances, law suits, briefs and judicial decisions said to cover a period of over forty years. Of this traction controversy it has

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been remarked by a member of the Chicago Bar, * well qualified to express an opinion on the subject, that "In the magnitude of the property rights affected, in its importance to this community, and in the significance of the legal questions involved, it is within the facts to say that the traction litigation is the most important of our generation in this jurisdiction." It was but a civic affair, yet several worthy citizens fell upon that field and there gave their lives in the line of duty. In the minds of many there exists good reason to believe that Edwin Burritt Smith's life was among those lost in the "traction cases." He was employed as special counsel for the committee of the city council on local transportation, the official body in charge of the traction question in all its forms. He performed the exacting duties of that relation in a state of steadily failing strength.

On a Sabbath day in the Spring of 1906, Pastor Dewhurst addressed the people of the University Congregational Church upon the text: "He looked for a city which hath foundations, whose builder and maker is God." Turning for a brief space from Asiatic tradition to our own American life the preacher paused to say these words:

And at this moment there rises up before me the figure of one man, honored and beloved among us, whose face, it may be, we shall see no more in mortal form, waiting for the death messenger to come. He will stand forth in our memory in days to come as one of our chief citizens, a man to whom that great clean word "citizen" in a pre-

* Mr. Horace S. Oakley, in a memorial of John Cass Mathis, who was associated with Mr. Smith as special counsel for the city in this litigation.

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eminent degree belongs; a man who, with the courage of clear vision, has looked for a city which had foundations, built on the granite of human integrity and honor; who, in the most literal sense, as I believe, has laid down his life in order that you and your children may live among civic conditions, of both the material and the immaterial kind, which will surpass those we possess to-day. For himself, it will be once more the story of Abraham—the life in tents—the vision unfulfilled and incomplete. For the days and the people to come it will be the city which hath foundations—the dream embodied, the hope merged into realization.

Edwin Burritt Smith died at his residence on Cornell avenue, Chicago, in the early morning of May 9, 1906. He was survived by his wife, Mrs. Emma D. Smith, and by their three children, two sons, Curtis and Otis, and a daughter Emily.

The funeral services were held at the University Congregational Church in the presence of the congregation and large numbers of neighbors and friends of the family, on May 12, 1906. The interment took place on the day last named at Rosehill Cemetery, Chicago.

Memorial services, very largely attended, were held at the University Church on May 20, 1906.

Rev. Mr. Dewhurst said at the Memorial service:

It would certainly be unbecoming and ungracious for us to meet here in this place this afternoon and not have a single word said regarding Mr. Smith's relations to the church. This building, with its dignified and sturdy architecture, is, in a good degree, a monument to his own far-seeing judgment.

The spirit and traditions and history of the church of which this individual church is a part, were in accord with

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his own fundamental convictions and faith and life, and his spirit and influence and sacrificial devotion and love are in all the air around us and will abide with us.

Professor A. H. Tolman said on the same occasion:

Each Congregational church, as you know, is a self-governing, Christian democracy. There is no larger Congregational Church, properly speaking. There is a Congregational denomination, made up of Congregational churches; but each church is responsible only to God and to the conscience of its own members. This policy suited Mr. Smith. He believed in democracy as few men believe in it. A favorite remark to us of our pastor is a quotation from Guizot, who says that democracy crossed over into Europe in the ship that carried the Apostle Paul. His thought I take to be that Paul so felt the worth of the individual, the true stature of the free man in Christ Jesus, that democracy was the only natural political counterpart and expression of Christianity. Democracy and Christianity in the world's final development will show themselves not two thoughts but one, God's plan for man.

In the Christian democracy that has its home in this edifice Mr. Smith was the most distinguished member. His personal devotion to this church was complete. His thought, his interest, his planning, his counsel, were constant. Into the edifice his thought has gone, into all our work his thought went.

This church was for Mr. Smith a starting place, a council, a point of departure, a school from which he went out to do the work of the Lord. He was not devoted primarily to the church. He was a Christian, but not, I should say, if I may put it that way, a churchman. He was devoted primarily to the service of his Lord, to the betterment of men, to the regeneration of this city. And when he went from this church into these larger interests, he was still in vital relation to the church. His work for the Municipal Voters' League, for example, is not to be separated from his relation to the church. He was doing the sermon. As I look at it perhaps that work is his most important ser-

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vice for the city. It is a beautiful example of the truth that is illustrated in his life-philosophy.

The people of this city want disinterested, intelligent, open, above-board leadership, and that is all they want. They want more democracy and not less, and the city was redeemed along these lines. And if the American city is to be, as I believe it is, the hope of American democracy, then some epoch-making work was done here by him and his associates.

And so, once more, his work for Hull House, for the Chicago Commons, and for the Y. M. C. A., is not to be separated from his relation to the church. He was again doing the sermon. He was especially interested in the work of Miss Jane Addams, and from the beginning he was the unpaid legal adviser of Hull House.

The following letters from Prof. Graham Taylor, Prof. Charles Eliot Norton, and Hon. Moorfield Storey were among those read at the Memorial Service.

CHICAGO COMMONS, May 18th.

Those of us who for the past ten years or more have worked with Edwin Burritt Smith for the promotion of public interests were most deeply impressed with the spirit of his manhood. For, more than upon anything else, his whole life centered down upon the welfare of the commonwealth, which called forth all his energies into their most virile expression. Above all the strong qualities of mind and heart, beyond every quest of his ardent soul, or any achievement of his tireless devotion, one trait rose supreme. It was his imperturbable, almost unconscious indifference to the result which his attitude upon public issues might have upon his personal reputation or his professional interests.

His convictions were his own. They came nearest to being the man himself. They were the most sacred of his possessions, as far apart from the rating of commercial assets as the attitude of prayer in the shrine of worship. Once convinced of the righteousness and public value of

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an issue, it mattered not to him how weak or strong its backing was, how popular or unpopular its following might be. In his vision each such struggle as that for the civil service law, for honesty and capacity in city government, for the municipal control of public utilities, for the peaceful progress of the Nation in the spirit of its constitution and history, and for the social unification of our cosmopolitan people by social settlements and other centers of human equality, was only part of the one great cause of a sane, safe, and progressive democracy. To that greatest cause Mr. Smith devoted the fine abilities and tremendous energies that never seemed to count the personal cost of his public service. A brave man and true has fallen at our side. But while his closest colleagues in all these movements deeply feel the loss of his counsel and coöperation, yet the steady and rapid increase of adherents due to such ideals of citizenship as he helped to inspire happily leaves the great cause less and less dependent upon any one man, or any few men. Thus again are we taught to find our life by losing it, to succeed by making ourselves less essential to the success of all that we hold dear.

GRAHAM TAYLOR.

SHADY HILL, CAMBRIDGE, Mass., May 17, 1906.

MY DEAR SIR:

I thank you for your letter of a week since. I share with you in sorrow for the death of Mr. Burritt Smith. His last letter to me, written not many weeks ago, had given me good reason for hope for his complete restoration to health. I counted upon many years of active and useful life for him.

My acquaintance with Mr. Smith began but a comparatively few years ago, but it ripened quickly into friendship. He visited me twice at my summer home in Ashfield. In our long conversations, I was impressed by the perfect coördination of his vigorous intelligence, with his strong moral convictions and clear moral per-

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ceptions. He was, like most Americans, an idealist, but his ideals were higher than those of the crowd, and his guide in the pursuit of them was not a blind enthusiasm, but an open-eyed good-sense. His character was all of a piece,—simple, sincere, steadfast. It was his nature to obey the call of duty, and to follow its path. This was the independence, this was the courage for which he was praised or blamed according to the nature of those who judged him.

He was an eminent example of the good citizen, and in his death not only Chicago but the whole country suffers a great loss.

But I am not writing his eulogy, and I say these general words concerning him, because I find it hard to express the more intimate sentiment of personal regret. Will you be so kind as to express to Mrs. Smith my deep, tender, and respectful sympathy? She knows that I shall hold the memory of her husband in honor and affection so long as life may last.

Believe me, gratefully and sincerely yours,

CHARLES ELIOT NORTON.

Boston, May 16, 1906.

MY DEAR MR. DEWHURST:

I am very sorry that it is out of my power to attend the services in memory of my friend Edwin Burritt Smith. His death is a calamity. Few men of my time have brought to the service of the public, such intelligence, such ability, such unselfish devotion, such untiring zeal. Unpopularity had no terrors for him, preferment no temptations, and when he decided that a certain course was right he brought to its support all his powers without thought of personal consequences. He rendered conspicuous service to his city, to his State, and to his country without asking any recognition for himself, and though at various crises I was in close relation with him, I never knew him to suggest the chance of political preferment or the danger of loss or defeat as a reason for action. As Mr. Schurz

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once said to me of him, "His was a heart of gold." He was in the highest sense of the word "an independent," a brave, true, patriotic man, and his death leaves a void which can hardly be filled.

The cause of good government, the cause of human freedom, the cause of equal rights, have lost in him a staunch supporter, and I have lost a friend for whom I had the sincerest respect and the warmest regard. May his example inspire us who remain to carry on with increased zeal the war against unjust privileges and oppression to which he gave his life.

Very sincerely,

MOORFIELD STOREY.

The following are letters from Professor James F. Colby, of Dartmouth College, Mr. Louis R. Ehrich, of the City of New York, and Professor John H. Gray, of Northwestern University, to Mrs. Edwin Burritt Smith:

DARTMOUTH COLLEGE,

HANOVER, N. H., June 22, 1906.

MRS. EDWIN BURRITT SMITH:

DEAR MADAM:

Allow me, though a stranger, to express my sincere sympathy with you as you sit under the lengthening shadow of your recent great loss.

My acquaintance with your honored husband, beginning in New Haven as we were embarking upon our professional careers, soon ripened into strong friendship which I am glad to remember never has been interrupted during all the intervening years. While our intercourse has been infrequent, our occasional talks and walks during the sessions of the American Bar Association and political conferences, and at Chicago, and during a delightful trip in the White Mountains in 1898, with the occasional interchange of pamphlets which we have prepared on legal and political topics, and personal correspondence, have sufficed to keep me informed in respect to his varied activi-

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ties, his constant intellectual enlargement, and the nobility of his manhood.

It has been a continuing marvel to me that he could give so largely not only to his profession but for civic betterment and the national welfare. His contributions to the cause of legal reform, municipal improvement, the merit system for the civil service, and what he deemed to be our wise policy with reference to acquisition of distant territories—collectively have been large, and entitle him to the respect and gratitude of all patriotic citizens. When to these services there are added those which he devotedly rendered to the church and to the profession of his choice, the record of achievement as well as the force of character implied commands admiration, and makes his life conspicuous among those whose characteristic is service for their fellow men. Surely it must be a large consolation to realize that his life is not a spent force but a vital influence which has helped upbuild institutions which go on though men come and go, and which to-day is recalled as a worthy example by many of his countrymen.

Be assured of my continuing remembrance of your honored husband and a constant and abiding interest in your welfare.

Very respectfully yours,

JAMES F. COLBY.

NEW YORK, September 28, 1906.

MRS. EDWIN BURRITT SMITH:

DEAR MADAM:

No doubt you heard your husband speak of me. In any event, I have enshrined him in my heart as one to whom I have given my esteem and my friendship. When the news of his death came to me in Europe—simultaneously with the news of the death of our common friend, Carl Schurz,—it made the world feel infinitely poorer. To you, above all, I need not speak of the shining virtues of Mr. Smith. He was an inspiration to all who

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knew him, a genuine uplifting force in the world. You may be assured that you possess the deep condolence of our entire family.

Yours very truly,

LOUIS R. EHRLICH.

EVANSTON, Ill., October 2, 1906.

DEAR MRS. SMITH:

I have just returned to the University after a seven months' leave of absence. I was on my way to Europe and out of reach of mail, telegraph, and newspapers at the time of Mr. Smith's death.

I cannot come back to this community for which he did so much, and take up my work without a word of sympathy to those nearest and dearest to him, and a word of testimony as to the help and inspiration he was to me, and to all other right-minded men who were striving to accomplish the work in which he was the acknowledged leader. My life will always be the richer for having come in contact with his, and the poorer that he is no longer present to inspire it.

With great sympathy and esteem,

JOHN H. GRAY.

In the comparatively few years of his professional life, Mr. Smith had grown into recognition at the Chicago bar as a lawyer of high character and great ability. He had gained this distinction in the most approved manner—by presence as counsel in important and actively contested cases in courts of law and equity. In 1897 he was among the counsel retained by Attorney-General Akin in support of the validity of the present Illinois Civil Service Law. His selection as one of the special counsel in the traction case has been mentioned. His friend, Judge Henry V. Freeman, says of him: "In the preparation

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and presentation of causes before a reviewing court, he understood and appreciated the importance of a clear statement of the vital facts. He possessed to an eminent degree the capacity to discern the controlling points of a case, and the ability to present them in logical order and arrangement, to give them cumulative effect."

The death of Edwin Burritt Smith closed a career full of the promise of yet greater personal distinction and social usefulness.

GEORGE LABAN PADDOCK.



CHICAGO AND ILLINOIS

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THE MUNICIPAL OUTLOOK *

THE Chicagoan, wherever he registers, writes the name of his city with something of the pride of Paul when, in answer to the inquiry of the chief captain whether he was not a certain Egyptian, he replied: "I am a Jew, of Tarsus in Cilicia, a citizen of no mean city." Yet, much as we glory in our city, in her private enterprise, her public spirit, her noble achievements, her inviting future, we do not forget her shame and our reproach—a municipal government which is one of the most complex, inefficient, and corrupt in the world.

A recent foreign visitor, writing in a London newspaper, refers to Chicago as a "splendid chaos"—"a casual horde of jostling individuals"—"the chosen seat of public spirit and municipal boodle"—"the most amazing community in the world." These phrases, though extravagant, indicate something of the strength and weakness of our great city. The fact is, Chicago is the typical city of the American democracy. She has the youthful enthusiasm, the restless energy, the adventurous spirit, the unfinished effort of the American people. Fresh from the great, even if imperfect, achievements of a vigorous youth, the acknowledged capital of an imperial domain, sure of her

* An address at All Souls' Church, Chicago, November 19, 1896.

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grasp of unrivalled opportunities, Chicago shares with the American people the inspiring anticipations of an exhaustless continent. In her achievements, in her defects, in all that she is and all that she lacks, Chicago epitomizes the great democracy of the New World. This implies that she lacks the historical inspiration, the sense of proportion, the self-satisfied completeness, the finish, the culture of the great cities of the Old World. Without ancestral voices to lull her into self-satisfied inactivity, she is spurred to resistless effort by the inspiring voices of a future in which her defects are to be overcome and her splendid destiny realized.

No other people have accomplished so much in so short a time as have the people of the United States. No other great people live so little in the past and so much in the future. In this, Chicago typifies America. No other city has made such strides. No other great city is so unfinished.

The political evils which the American people suffer to-day mainly spring from their over-confidence in the inherent force of free institutions. This over-confidence is, however, but the natural result of the feeling of relief which came to our race upon its final achievement of free government after many generations of strife.

There is no contrast between the conditions of mediæval and modern life more significant than that touching the relative security of life and private property. When we look back beyond the declaration that all men are created with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; we find a record of ages of public disorder in which, though the

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king in name ruled, the people in fact bore the burdens of the almost constant strife and war through which civilization made its way toward the general peace and order which our century is the first to enjoy. Under the organization of society known as feudalism, the peace of rare intervals was an incident, not an end. Then government did not exist to conserve the interests of the governed, but the people existed to sustain and defend the government. Even the land, which was almost the only property, was owned by the king, and held by his subjects upon condition that they perform military service. The duty of a freeman was to render knight-service, a service in the field for forty days in each year, without pay other than the use of his allotment of public land. He obtained from the land a livelihood for himself and family, merely as an incident of his knight-service. Even the mesne lords, after a compact national organization had been accomplished, as in England by the conquest, held their estates from the crown as public servants that they might marshal their retainers, holding of the king through them, to perform the military service which it was the burden of the land to supply. Civil strife over the succession to the crown often made it necessary for the mesne lord to choose between rival claimants of authority, the penalty for a mistaken guess as to the one who would prevail being the loss of his head on Tower Hill. The land was the basis of a military government, in which all freemen had a share coupled with onerous public duties. The land and the people were welded together as the basis of a compact and strong national authority exercised by the king.

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The crude democracy of the isolated village communities had given way to the powerful military monarchy, which, with almost despotic authority, had welded detached groups of kinsmen into the great nation having a definite territory, uniform laws, and comparative freedom from local disorder. But, through all this experience, necessary as it then was, there had survived in men's minds and hearts the memory and love of the personal freedom of primitive days; and, before national unity had scarce been achieved, the struggle began for a democracy which should combine the advantages of a wide national authority with something of the local self-government and personal freedom of the village community. Thus the evolution was from the simple and primitive democracy of the isolated group of kinsmen, known to us as the village community, through the military despotism of the feudal monarchy, to the complex and powerful democracy of a great continent in which we to-day rejoice. When we consider through what tremendous and prolonged sacrifices this evolution came, we shall not greatly wonder that the result was hailed as a final goal, and that men thought the time had at last come in which they were free to enjoy life, liberty, and the pursuit of happiness, without serious public cares or duties. The time had indeed come in which government exists for the people, not they for the government. Upon this discovery and achievement, the people rejoiced. All men having become rulers, the task of government seemed light, and they entered upon their private pursuits, leaving the conduct of their public affairs to self-seeking politicians. That the complex machinery

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of popular government has, under these conditions, fairly performed its functions, cannot be denied. In fact, that life and opportunity and property have been so secure over an extended country, under an administration of democratic institutions so imperfect, is itself conclusive of the superiority of such institutions.

But the security of life and private property, though of great value, is not the end of popular government. Indeed, it is but the mere basis of a worthy national life. Content, if they would but furnish us such security and leave us alone to our private pursuits, we have in America left public matters more and more to the seekers and holders of public office. The mixed results of this course have, at last, become fully evident. Among these results are the splendid achievements of private enterprise, the degradation of the public service to private ends, and inefficient to corrupt government. Under this *régime* our national and local governments, though intended to act independently, have been pooled to furnish spoils for the active members of the two great national parties. It has placed the public authority in the hands of officials who are without opinions on public questions, or who are too cowardly to express them. To such men the end of government is simply spoils. Their idea of a statesman is a political boss who distributes public appointments, sells nominations, accepts bribes, levies blackmail, and makes popular government a sham and a reproach. This is known as the spoils system. It has placed party organization and public authority in the hands of parasites, and has resulted in inefficient National and State adminis-

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tration and the corruption and paralysis of municipal government.

Under this system, political parties, though professedly organized to advance national policies, have assumed control of municipal administration. This has placed the municipal business of every American city at the mercy of spoilsmen. It has made the city hall of Chicago an asylum of party retainers, who live on the public revenues, control party management, and stand between the people and their government. It culminated in Chicago in 1895 in a common council which was literally a den of thieves. Some three-fourths of the members banded themselves together to plunder the public and blackmail corporations. They sold every public right for which a purchaser could be found, and even organized a syndicate, composed in part of some of their own members, to hold the General Electric ordinance until a purchaser should appear. All this was done as a matter of course, and with hardly a pretence of concealment.

This would be indeed a dark picture if we should stop here. But there is something to add to it. The American people, occupied as they were with their private pursuits, long regarded any suggestion that they owe some of their best time and effort to public matters, as an attempt to interfere with the sacred rights of private citizens. But the growing disregard of public opinion by the spoilsmen finally produced its effect. Private citizens slowly came to realize that even their personal interests are endangered, that there is a very close relation between public and private morals, and that every man owes something in the

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nature of knight-service to the public. This awakening led to the national civil service law, and the gradual growth of the conviction that the thorough reform of the National, State, and municipal civil service is a fundamental condition of even decent public administration. By 1894 this truth had taken deep root in Chicago, and private citizens had become aroused by the disgrace and danger of leaving the public interests of Chicago to a lot of common scoundrels. This led to the civil service law of 1895, which prepared the way for the divorce of our municipal government from national politics—a separation which public opinion should at once decree and enforce.

The growing interest in municipal reform had already found expression in a large and representative conference, held at the call of the Civic Federation in January, 1895. At this conference strong appeals were made to the members of both national parties to attend their respective primaries and get the bosses to nominate honest aldermanic candidates. This was the final exhortation to the bosses to be good and give us honest public officials. They were, no doubt, flattered by the appeal. It assumed that they are not wholly lost to decency, and are even capable of becoming instruments and leaders of reform. It also assumed that we must rely upon them, that they only hold the keys of practical politics, that they alone understand the mystery of carrying elections. These absurd assumptions indicate how innocent we all were only two years ago.

The aldermanic election of 1895 was held in due time. The last appeal to the politicians had failed. A very few honest men were chosen to associate with a lot of the worst

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scoundrels ever gathered in one place outside of the penitentiary. Then followed the barter of public franchises and the blackmail of private interests, to which reference has been already made.

It was in the face of these conditions, when good citizens doubted whether anything could be done, that the political committee of the Civic Federation called another general conference which met last January to consider whether anything in fact could be done about it. Since the conference of a year before, the civil service law had been passed and an excellent commission appointed. Hence, none of us regarded it as absolutely necessary to vote on party grounds for whatever boodlers and spoilsmen our national parties might regularly name. The conference made no further appeal to the bosses, but took action which resulted in the organization of the Municipal Voters' League. This is an organization of busy men who are neither seekers nor holders of public office. The League took the field at once and made its appeal directly to the voters. There were thirty-four retiring aldermen, most of whom desired to be "vindicated" by a reelection. When it was found that the League would publish the truth about them, some retired. Others were defeated at the polls. Of the six who were reelected to the council, two were supported by the League, two were opposed by candidates whom it endorsed, and two were unopposed by fit nominees. The League finally endorsed candidates, more or less fully, in twenty-nine and won in twenty-six wards.

The result of this first disinterested and direct appeal

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to the voters, surprised good citizens almost as much as it did the political bosses. It also shattered the superstition that only a mysterious combination of "pulls" and "boodle" and "astute politicians" can bring out candidates and secure their election to public office.

This was accomplished because the people are weary beyond endurance of the spoilsmen and all their works. The Municipal Voters' League simply served to unite the vast majority of citizens who are animated by a like patriotic purpose in their desire for a radical and permanent reform of our municipal administration. In its good work it had the cordial coöperation and efficient support of the Civic Federation and nearly the entire press of the city.

The time will no doubt come when it will seem strange indeed that we could have so rejoiced, as we have this year, because somewhat more than one-third of the members of our city council are men of common honesty. The recent foreign observer, already quoted, in referring to our reform movement, says: "It is thought a great step forward that there are now actually one-third of the members of the municipal body who can be relied upon to refuse a bribe." We do not, however, pretend that the result of the late aldermanic election was especially noteworthy in itself. Under normal conditions, with party management and the nomination and election of public officials in the hands of private citizens having no interest but the public good, the choice of honest men for official service would be a matter of course.

We rejoice at the result of the aldermanic election of

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1896, because that result clearly indicates the final awakening of good citizens to the obligations of citizenship and a greatly increased public interest in municipal reform. It shows that we have finally come to realize that political institutions, however good, will not work themselves, or produce good government when controlled by men who have only private ends to serve.

The council of 1895 marked the culmination of a bad system. It contained a few isolated, helpless members who earnestly sought to discharge their public duties. The council of 1896 marks the beginning of better things. It has a compact and effective minority, composed of honest and able men whose service has already greatly benefited the city. Their presence in the council is the harbinger of honest and efficient municipal government for Chicago. That they could be placed there by a hasty effort, that was slight indeed, is itself, to good citizens, a revelation of the highest value.

For years we had seen our public service sink lower and lower and our municipal administration become more and more a criminal conspiracy. We had sought to check this by an appeal to the political bosses, whom we regarded as our only hope. After they had again and again failed us, as it was inevitable they should do, being themselves the product of the bad system to be reformed, we almost despaired, and even began to feel that perhaps, after all, the worst possible municipal government was part of the cost of what we still tried to regard as free institutions.

We must not, however, stop even to celebrate the victory of last Spring. It was but a mere beginning, and

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its chief significance lies in what it taught us of the way which, if faithfully pursued, will lead to final and permanent success. The fundamental difficulty with reform movements still lies in the fact that the active participation of private citizens in public affairs is, at best, spasmodic and far from general. Genuine and permanent reform awaits the dissipation of the heresy that the private affairs of the citizen are paramount and his political duties secondary and incidental. When we fully realize that free institutions will not work themselves; that their management cannot be safely left to the holders and seekers of public office; and that it is but the reasonable knight-service of the private citizen to control and work them, we shall promptly and forever dispose of the spoilsman, and our public service will again be honorable and honored among men.

The time has come to insist upon the absolute and final divorce of our municipal business from national politics. Our next municipal campaign should be conducted solely for the sake of Chicago. We have spent the recent weeks in saving the country from what many of us believed to be repudiation and dishonor. Let us spend some weeks this Winter and early Spring in saving our city from the spoilsmen and boodlers who are gnawing at her vitals.

In feudal times the regular knight-service of forty days in each year was sometimes commuted so that of every three knights one served a three-fold term, the others helping to equip him. With us, the public service which we all alike owe, is either entirely left to political bosses, or is so commuted that one man serves for a hundred or

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even a thousand of his neighbors, who slave at their private affairs and regard him as a crank who neglects his business and whose motive must be to secure public office for himself. So completely have private citizens come to neglect their public duties, that one can hardly render the disinterested knight-service which the State has a right to demand of all, without having his motives suspected. When good citizens assume charge of political organizations and *call* men to office because of their fitness to render efficient public service, our point of view will be changed and participation in public matters will become general. If the overwhelming majority of our fellow-citizens in all parts of Chicago, who desire good government will next Spring spend not forty days, but even a few evenings in consulting with their neighbors about the public welfare of Chicago, and assist in securing the nomination of fit candidates for city and town officers; or, if many of them will simply learn after their nomination what candidates should be approved and make it known to their personal friends and immediate neighbors, soliciting their votes for such candidates,—the occupation of the spoilsmen will disappear and the city will be redeemed.

The Municipal Voters' League, the Civic Federation, and a press which fearlessly and ably performs its public duty, will lead the way. They desire the most earnest and active coöperation and support of all good citizens, irrespective of their political affiliations and without respect to their opinions about the currency or the tariff. During some further probationary period, while the heresy that national parties should control municipal business as party

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spoils lingers in the minds of any whose intentions are good, we will not refuse the help of party machines in the nomination and support of entirely satisfactory candidates. It should be perfectly understood, however, that at the next municipal election the plain citizens of Chicago, who have no personal ends to serve and are concerned only for the welfare of their city, intend to have good candidates to support for municipal office, even if they have to nominate them without the aid or consent of any self-constituted party manager.

That we shall elect a sufficient number of honest and capable aldermen to join the pioneers, who have so admirably opened the fight for good government, and make a good working majority in the council is already certain. We can easily improve on the hastily organized campaign of this year. The records of the retiring members of the council—and most of them will be *retired* members after next April—have been compiled from official sources with great care, and we are fully prepared to publish them with some attention to detail. Now there is nothing that a city statesman of the spoils variety so much dislikes as a campaign in which his official record is made the issue. He abhors it as nature does a vacuum. He much prefers to have a local campaign conducted on broad national lines. He regards discussions of the tariff, the currency and even bleeding Cuba as of much greater educational value than the facts of his own modest career. In this, however, he is much mistaken. There is absolutely no subject of study or course of training of such vital interest and value, for those who desire to become good

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citizens and hereafter discharge their political duties, as that furnished by the careers and methods of the spoils-men and boodlers who have made municipal government in the United States a disgrace to the American name.

The prospect is already bright that we shall find it easy this time to secure good aldermanic candidates. It is one thing to be placed in criminal company for two years, where you can neither serve public interests nor even check public plunder. It is quite another matter to become a member of a legislative body possessing great powers which its majority will exercise only to conserve public interests. It will be a high honor to be a member of our next common council. Those who share it will have the splendid opportunity to begin the reform of our municipal government.

We must not, however, in our earnest desire to redeem the council and make it serve public instead of private ends, overlook other departments of our absurdly complex municipal system. This time we shall also endeavor to secure the election of town officers—especially the assessors—who are not only good men but who are entirely free from obligations to the party machines. It is the hope of all good citizens that we shall obtain well-considered revenue legislation at Springfield this Winter. But whether we succeed, and especially if we fail, in this, it is very desirable at the next municipal election to remove the assessment of taxes absolutely from party control.

The choice of a mayor at the next election appeals most strongly to the public interest. When we think of what the Mayor of Chicago might be and do, and contrast this

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with what many of our mayors have been and done, we shall not over-estimate the importance to our city of the choice of its next mayor. Let us picture to ourselves for a moment what kind of man he should be, and what ought to be his attitude to the vast public and private interests in respect to which he must officially act.

The next mayor of Chicago should be a man of affairs. He should be of unblemished reputation, good ability, decision of character, and unflinching courage. He should have the judicial poise of mind that will enable him to hear many things of all men and then select and act upon only what shall make for the public welfare. He should be free of prejudice for or against persons, corporations, parties, creeds, and nationalities, in order that he may do justly by all. He should be frank and open in the discharge of official duty and willing to accept and bear the responsibility of his official acts, whether for the moment popular or otherwise. He should be absolutely free from every obligation to any party or personal machine. He should put behind him all ulterior ambitions and enter office with the high resolve to do his whole duty here and now, as he is given to see that duty, without thought of the effect of his official acts upon his future career. He should, under all circumstances, realize that he is retained by the city, and that to his fidelity she has entrusted, in large measure, the public welfare. He should surround himself with a cabinet of men of like high character and purpose, who will give the city the full benefit of the civil service law, and conduct its business without favoritism and upon the strictest business principles.

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Can such a mayor be had through regular party nomination? *Can there any good thing come out of Nazareth?* This is always possible, but highly improbable. However, we are willing to wait a little while to see what the prospects are. Even this is a concession to conservative influences, and for the time being. The claim by national political parties of the right to name candidates for offices which are merely local, is itself a survival of the spoils system which we tolerate only because we are accustomed to it.

There are many who believe that no man thus nominated can be free from at least implied obligations to the machine. Possibly this is an extreme view, but it has much to justify it. Anyway, we insist upon a candidate for mayor at the approaching election who shall be free from machine obligations, express or implied. No one of machine affiliations, no one who is merely "streaked with decency," will do this time. If it appears that we are not to have a fit candidate by party nomination, such an one will be named by the reform forces of the city in time for an aggressive campaign.

Such are the inspiring opportunities and prospects of our next municipal campaign. Shall they be improved and realized? That is for the good citizens of Chicago to say. We believe that they are ready for the contest and that the result does not admit of doubt. But we must not be content with the victory that awaits us next Spring. It will simply clear the field for action. Our municipal government is absurd, complex, and costly. Within the territory of Chicago are found, in practically independent

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operation, the county and city governments, a board of education, a library board, three park boards, and seven towns. As each of these exercises the power of taxation, we are not required to go anywhere to be taxed. Under such conditions good municipal government is impossible. The machinery of our local administration must be simplified, our elective officers and elections reduced in number, and our municipal government unified.

If the good citizens of our city but perform their public duties with something of the energy which they expend in their private business, their municipal administration will speedily become a model of integrity, economy and efficiency, and Chicago will move forward with irresistible strides to realize her splendid destiny. Let us cheerfully perform the knight-service which it is but the reasonable right of our city to require. Let us, while diligent in private business, render unto Cæsar the things that are Cæsar's.

THE MUNICIPAL VOTERS' LEAGUE OF CHICAGO*

MUNICIPAL reform has been so long a topic of languid discussion and so little an object of practical work among us, efforts to accomplish it have been so spasmodic and their results so transient, that it is too early to predict whether the present general movement to this end will prove persistent. There are, however, indications of popular interest that give promise of ultimate success.

The need of the hour is to make municipal government representative. It is now dominated by special interests. It must be made representative of the people. To the extent that we have abandoned the legislature to private interests, and fallen back on the executive and the courts, we have armed special privilege with affirmative authority, and left public interests to be defended by officials exercising powers which are mainly negative. Thus, in lieu of simple and responsible municipal government exercising adequate affirmative powers, we have a hotchpotch of warring officials and boards.

Honesty and capacity are the essential qualifications for public service. A city government manned by officials having these qualifications will be both representative and efficient. How certainly to secure such public officials is the problem of municipal reform. It is prerequisite to the discussion of policies and measures. The aim must be

* Reprinted from "The Atlantic Monthly," June, 1900.

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to make municipal government sound to the core. All else will follow.

Some account of the work led by the Municipal Voters' League, and now going on in Chicago, may serve as a contribution to the movement to recover representative government. While the methods of the League may not prove to be generally or permanently applicable, their success thus far is full of promise.

The city government of Chicago touched bottom in 1895, when fifty-eight of its sixty-eight aldermen were organized into a "gang" for the service and blackmail of public service corporations. Within that year six great franchises of enormous value were shamelessly granted away, in utter disregard of general protest and the vetoes of the mayor. Most of the members of the council were without personal standing or character. The others were practically without voice or influence. The people scarcely realized that the council contained an element representative of public interests. The agitation led by the Civic Federation, the Civil Service Reform Association, and other reform organizations had, however, borne fruit. A wide interest in local administration had been aroused, and a desire for better things was already general. The task seemed all but impossible. Those looked to for leadership despaired of success. The city was in the grasp of strongly entrenched special interests. Certain public service corporations owned the council, and profited by undue influence with other agencies of the city government. Enormous private interests were at stake, and the city seemed to be at their mercy. The political organiza-

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tions were of the usual character. Their relations with the corporations were not unfriendly. The city carried on its registration lists over three hundred and fifty thousand voters. About three-fourths of these were of foreign birth or parentage, and many understood the English language but imperfectly, if at all. Nearly all who composed this vast aggregation of seemingly diverse elements were bent upon their private pursuits. Could they be united to rescue the city from the spoilsmen? Few so believed.

Such was the situation when, in January, 1896, at the call of the Civic Federation, about two hundred men, representing various clubs and reform organizations, met to consider what might be done. The year 1895 had brought the new civil service law, the most thorough yet enacted. This had cleared the way for a wide coöperation of good citizens, regardless of national politics. In the conference it was assumed that something must be done. No one was prepared to say what should be attempted. A sharp discussion arose on an individual proposition to form a "municipal party." The matter was finally referred to a committee of fifteen representative men. They subsequently reported in favor of the organization of a "Municipal Voters' League," to be composed of a hundred men, and have power to act. The principal objects announced were to secure the election of "aggressively honest men" to the council, and to sustain the civil service law. As the conference could not agree upon a "municipal party," it chose the indefinite term "League." Thus the movement was left free to show by its works whether it was to be a party or something less.

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The committee of one hundred met but twice: once to appoint a small executive committee, and again, after the first campaign, to hear its report. It then disbanded, giving the executive committee power to perpetuate itself. After the first campaign the League assumed its present simple form of organization. The executive committee is composed of nine members. The terms of one-third of these expire each year. Their successors are elected by those holding over. The committee selects the officers from its own membership. Their duties as officers are administrative, no final action being taken without the vote of the committee. Advisory committees of from one to five members are appointed in the wards. Their duties are to furnish information and advice; especially when called for, and on occasion as directed to start movements for the nomination of independent candidates. Finance and other special committees are also appointed, some of whose members are usually drawn from outside the executive committee. No person, committee, or organization in the wards has authority to use the name of the League or in any way to commit it for or against any candidate. This makes its action definite and authoritative.

The general membership of the League is composed of voters, who sign cards expressing approval of its purposes and methods. No general meetings of the members are held; but circular letters advising those in a given ward of the local situation are frequently mailed during aldermanic campaigns to secure a wide coöperation. At the opening of its second campaign the League mailed a

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pamphlet to every registered voter in the city, giving the history for some years of franchise legislation by the council, with a full report on the records of retiring members. Since its work has become thoroughly known, the general publication by the newspapers of the reports and recommendations of the League is very effective. Its facts and conclusions are usually accepted by the press, and no substantial newspaper support can be had for candidates whom it opposes.

The League makes no attempt to keep up the usual pretence of direct representation of its general membership. No claim is made that the action of the executive committee represents any save those who approve it. The facts upon which such action is based are always given. The appeal is directly to the individual voter, by means of specific recommendations supported by the salient facts. In due time before nominations are made, a full report of the official records of retiring members of the council is published, with specific judgments as to their respective fitness for defeat or reelection. On the eve of the election a like report on all candidates is published for the information of the voters. It is assumed that the main issue is upon character and capacity. The voters are advised, however, whether a given candidate stands on the "League platform," which is a pledge to exact full compensation for franchises, support the civil service law, and unite with others to secure a non-partisan organization of the council.

The League is entirely non-partisan. The members of its executive committee want nothing for themselves.

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It strives only for the council. This one thing it does. It makes no fight, as yet, on "the machine" as such. Its fundamental purpose is to inform the voters of the facts about all candidates. There is nothing that the city statesman of the ordinary spoils variety so dislikes as a campaign in which the issue is upon the facts of his own record. He abhors such an issue as nature abhors a vacuum. He prefers a campaign conducted on broad national issues. He regards discussions of the tariff and the currency as of much greater educational value than the facts of his own modest career. In this he is much mistaken. The League has demonstrated that there is nothing of such interest to the voters, on the eve of a municipal election, as an authoritative statement of these suggestive facts.

The headquarters of the League is the clearing house of the aldermanic campaign. It is thronged with candidates, party representatives, and citizens. They come with facts for the executive committee, or to advise and consult it. The president and secretary and their assistants patiently hear all. More and more they are consulted in advance about nominations. Party managers in many wards in which the League's support has become vital to success submit names of candidates in advance. It often happens that several are rejected before one is suggested who bears the close scrutiny of the League. The confidences of these conferences with party managers are faithfully kept. No claim is ever publicly made that a given nomination has been forced by the committee. The party managers are given full credit for all worthy

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nominations. The League rarely suggests a candidate in the first instance. It is thus able to deal fairly with all. It often participates directly in the campaign in close wards after the candidates are named.

Such in brief are the methods of the Municipal Voters' League. What are the results? It has now conducted five campaigns, in each of which the election of one-half the membership of the council of the city of Chicago was involved. In its first campaign, twenty out of thirty-four wards returned candidates having its endorsement, two of these being independents. Five others, to whom it gave its qualified endorsement as the choice of evils, were chosen. Each of these last proved unfaithful to public interests. Five others betrayed their pledges. At the expiration of their term, two years later, the League recommended nineteen retiring members for defeat, and fifteen for reelection. Of the first group, but five secured renominations, and but two reelections. Of the second group, three declined renominations in advance; the twelve others were all renominated, and eleven of them reelected. In the same campaign, twenty-five former members of bad record sought to return to the council. The League objected to their nomination, giving their records. Only six were nominated, and three elected. In the campaign of the Spring of 1899, the Democratic candidate for mayor carried seventeen wards from which Republican candidates for the council having the support of the League were returned. All but two of the retiring members condemned by the League were defeated for reelection.

The net result of the five campaigns must suffice, in

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lieu of further details of the several contests. Of the fifty-eight "gang" members of 1895 but four are now in the council. The "honest minority" of ten of 1895 became a two-thirds majority in 1899. The quality of the membership has steadily improved. Each year it is found easier to secure good candidates. To-day the council contains many men of character and force. A considerable number of prominent citizens have become members. The council is organized on a non-partisan basis, the good men of both parties being in charge of all the committees. It is steadily becoming more efficient. No general "boodle ordinance" has passed over the mayor's veto since the first election in which the League participated. Public despair has given place to general confidence in the early redemption of the council. It is no longer a good investment for public service corporations to expend large sums to secure the reelection of notorious boodlers. It is no longer profitable to pay large amounts to secure membership in a body in which "aldermanic business" has ceased to be good. It is now an honor to be a member of the Chicago council. Any capable member may easily acquire an honorable city reputation in a single term of service.

This change has been wrought in the face of the most powerful opposing influences. The licenses or franchises of the principal street railways of Chicago are soon to expire. For three years, from 1896, the companies sought renewals on terms without regard to the rights of the city. By grossly improper means the so-called Allen bill was secured from the legislature in 1897, permitting extensions of street railway franchises for fifty instead of twenty

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years, as before. From the passage of this bill certain of the street railway companies brought every possible influence to bear on the members of the Chicago council to secure fifty-year extensions without compensation to the city. It is believed that members of the rank and file could have taken fifty thousand dollars each for their votes. But the council stood firm. A clear majority refused all improper advances. The attempt ended in utter failure. It was finally, late in 1898, abandoned.

The enactment of the Allen bill in 1897 led to a demonstration of the irresistible power of a persistent public opinion. Within two years the succeeding legislature, with but one dissenting vote, repealed the act, and restored the law which it supplanted. The time had come when even vast private interests might not with impunity purchase legislation in Illinois. The deep disgrace to the State in the passage of the Allen bill was not forgotten by the people. The Municipal Voters' League, on the eve of the legislative campaign of 1898, caused to be published throughout the State, for their information, the detailed records of all members of the legislature on the passage of the Allen bill. The plain facts rendered unavailable for renomination most of those who had betrayed the people by its support. Fully eighty-two per cent of its supporters failed of reelection. A vicious minority scheme of representation alone saved most of the others from political death.

The defeat of street railway legislation in Chicago under the Allen bill, the failure throughout the State of

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its supporters for reelection, and the restoration, by practically unanimous vote of the legislature, of the law which it had supplanted, constitute the most notable triumph of public opinion of recent years. The end is not yet; but not soon again will public service corporations openly purchase legislation in Illinois.

The few busy men whose privilege it has been to direct the work of the Municipal Voters' League know full well that only a beginning has been made, that merely the edge of a great problem has been touched. They make no claims for themselves. It has only been their fortune to lead for a little while, in a single city, a growing movement of the people to recover representative government. To the united support of the reputable press, and the splendid coöperation of good citizens of all parties and elements of a mixed population, are due the results attained. Disinterested leadership was alone wanting. This the League has furnished. It has wasted no energy in merely making wheels go round. Its appeal has been directly to the people. It has entered no *ex cathedra* judgments. It has simply relied upon making the facts known. Aside from pledges of support of the civil service law, for non-partisan organization of the council, and to exact adequate compensation for all municipal grants, it has exacted no pledges from candidates supported. The League has placed the emphasis on character and capacity. It maintains that a council composed of men having these qualities will faithfully represent the people, treat justly all private interests, and dispose of every question on its merits.

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A vision of representative government regained in the city, as the basis for its recovery in the State and Nation, already appears. To realize it, we must renew our faith. Self-government is fundamental; good government is incidental.

COUNCIL REFORM IN CHICAGO *

ASSISTANCE GIVEN BY THE PRESS

THE League mainly relies on the mail and the press to communicate its facts and recommendations to the voters. In 1897 it mailed to every registered voter in the city a pamphlet giving a detailed history of franchise legislation for several years, with the records in respect thereto of the retiring members of the council. As the work of the League has become known, it has relied more and more on the press as a means of communication with the voters. Its report on the official records of the retiring half of the council, usually published about two months before the election of new members, is looked forward to as a sort of annual judgment day, and is generally regarded as the opening of the aldermanic campaign. Its final report on the qualifications of all candidates, usually published on the Friday preceding the election, places in the hands of all voters who care for it the facts from which to form their own conclusions for whom to vote.

The cordial support of the League, through five consecutive campaigns, by the local press, illustrates anew the splendid public spirit of its proprietors. Full-page advertisements, purporting to show the reasonableness of their

* This paper was printed in pamphlet form in 1900. Some passages have been omitted, in most cases because the topics have been sufficiently discussed in the preceding articles.

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demands, were run for days in all the great dailies by the traction companies in the fight to obtain fifty-year extensions of their franchises, to which reference is made below. Yet all the papers, except the one owned by certain traction interests, remained true to the cause of the people, actively supporting the League candidates for the council. Chicago owes much to the proprietors of her great newspapers. They have for years more and more sunk the ordinary rivalries of business and cordially united in effective support of whatever has made for civic betterment. Few know the extent or power of the influences which they have resisted to this end. The resources of the public service corporations of a great city are enormous. Like the centurion of old they say unto one, Go, and he goeth; and to another, Come, and he cometh; and to their servants, Do this, and they do it. In their fight for fifty-year franchises, the traction companies of Chicago commanded the support of powerful stockholders, bondholders, brokers, and bankers—all whose interest it is to have floods of local investment securities of the highest possible value. All these, backed by the other public service corporations, exerted every possible influence upon the public press in behalf of special privilege. To the honor of the Chicago press, they secured but a single newspaper and that by direct purchase.

CAMPAIGN METHODS

There is no attempt by the League to keep up the usual pretence of direct representation of its constituency. It assumes that character and capacity are the funda-

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mental qualifications for useful public service; that men having these qualities will faithfully represent the people, treat justly all private interests, and dispose of every public question on its merits. It claims to represent only those who approve its purpose. It appeals for their support in every case only on the basis of the facts given to sustain its conclusion and recommendation. The appeal is always to the individual voter through bulletins such as the following:

Twenty-first Ward.

———. —Lawyer, 603 Kedsie Building, resides 33 North Grove place. Elected to council in 1898, with endorsement of League; since assuming office has made constant study of street railway situation; instrumental in drafting new rules for council, including plan for standing committee on compensation, which rules failed of adoption; fought street railways' attempt to secure fifty-year franchises; opposed Powers' organization of council and voted for resolution establishing special committee on street railway legislation. He is an exceptionally strong and able man in the council and diligent in behalf of the public welfare. ALL GOOD CITIZENS SHOULD URGE HIM TO BE A CANDIDATE AND REGARDLESS OF PARTY SHOULD INSURE HIS REELECTION.

——— *Ward.*

———. —Republican; insurance business, —— street; residence, —— street. Born in State of New York; moved to Michigan and enlisted at breaking out of the war; has been in insurance business in Chicago for many years; an old resident of the ward; he declines to say whether he will or will not vote for or against fifty-year franchises and extensions; bears a good business reputation.

The first of the above recommendations, backed by an active campaign in the ward conducted by the League, resulted in the reelection of the candidate as an independent. In the other case the candidate was defeated in an overwhelming Republican ward, although the League

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was obliged to say of his opponent that his business record was not good but that he had "signed League platform."

It is, of course, not to be supposed that such treatment of candidates goes without question from those condemned. In every campaign some bold but unwary members of "the gang" turn upon the League. How these opportunities are improved may be illustrated by an open letter by the president of the League given out a few days after the publication of its preliminary report on the retiring aldermen, as follows:

MR. _____, ALDERMAN FROM THE _____ WARD.

Dear Sir — Permit me to acknowledge receipt on this date of the open letter of the 14th inst., with which you have honored me. You express surprise that your official record does not inspire the Municipal Voters' League with confidence in your zeal in the defence of the city from fifty-year extensions of existing street railway franchises. This merely suggests that you may have underestimated the capacity of "theoretical reformers" to draw conclusions from official records. We have simply said of you this:

"_____ : keeps restaurant at _____ street; lives _____ street; elected to council in 1897; his record indicates weakness of character; is recorded as not voting on Commonwealth Electric, though against it after veto; opposed General Electric ordinance and gang organization of council committees; voted to proceed with Seventeenth Ward contest, for prohibiting action on franchise ordinances for thirty days after introduction and for appointment of special compensation committees; having made this good record he spoiled it by continuous support of the street railways in their fight for fifty-year extensions; he cannot be depended on and should be retired."

You will note that this is a simple recital of facts, with the conclusion that we have ventured to base upon it. You do not question these facts, but raise immaterial issues whether you have violated your pledge of two years ago to the League or failed to sustain the mayor "on all ordinances that have come up for consideration in the council." If you will now quietly read our recital you will note that we express no opinion on these points.

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Our real offence, which you exaggerate into "license to traffic in the personal honor of mankind," is merely our conclusion that you "cannot be depended on and should be retired." We concede that it would be quite improper for us to pronounce judgment upon your fitness for reelection without stating with accuracy and plainness the facts upon which it rests. It may even yet occur to you that if our conclusion is unsupported by the facts stated, it must fall to the ground. Indeed, if the above recital of your votes on matters of vital public concern is a record of which you are proud and which entitles you to reelection as a champion of public as against corporate interests, we are entitled to your thanks for the wide publication which we have given and shall yet give it. It is well that the city should know the deeds of its heroes in the council arena. It is our humble function to help it to know them.

You must pardon us if we cannot agree with you as to the reward to which your service in the council entitles you. This is the sole issue. It is quite immaterial whether I am a "theoretical" or a "practical" reformer. The question is upon the record which you have made. The voters of your ward care nothing for our differences of opinion respecting it, but I can assure you that the record itself is of exceeding interest to many of them at this juncture. However we differ in regard to "practical reformers" and as to the inferences to be drawn from your somewhat wobbly official record, we may at least coöperate to give that record the widest possible publication.

Yours very truly,

President Municipal Voters' League.

The publication by the newspapers, with editorial comments, of this retort finished the work of making a candidate for reelection unavailable. He was not afterwards heard from, and failed of renomination. His successor was elected with the endorsement of the League.

One of the first acts of the League upon its organization in 1896 was to oppose the renomination by a good constituency of a man of social and business standing whose record was good except as to a few votes for notorious measures. The intention was by this act to set a high

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standard and test public sentiment. A significant correspondence followed:

CHICAGO, March 4, 1896.

_____,
PRES. MUNICIPAL VOTERS' LEAGUE,

Dear Sir—I notice in the Sunday papers that your organization says that it cannot endorse Alderman _____ of the _____ Ward for reelection. You will, I trust, pardon me when I say that in this you may have made a mistake, as I judge that you came to this conclusion from what has been said to you by the parties endorsing Mr. _____. I have known Alderman _____ for some time, and I have no hesitancy in saying that he is one of the best aldermen in the city council; and should you take the trouble to see him and talk with him, you will find that in every instance where he is charged with having voted for a so-called "boodle" ordinance it was not done corruptly, but that he might secure votes for some meritorious measure that would benefit the whole people.

I do not live in his ward and have no other interest in this matter than to see that active, earnest and honest, capable aldermen are elected to the council; and I urge upon your committee that they re-consider their action and use their best efforts to reelect Alderman _____, not in the interest of party politics, but for the best interests of this great city of which we are all justly proud; and in conclusion I desire to say that I owe much to his assistance for the passing of the Jackson Blvd. ordinance.

Respectfully yours,

[Signed by a high public official.]

Endorsed—I have known Alderman _____ for more than twenty years last past, and believe that the best interests of the city will be conserved by his reelection.

[Signed by three republican judges on the bench and several citizens of high standing, all being of the party to which the candidate belonged.]

The following reply was promptly made by the executive committee of the League:

CHICAGO, March 6, 1896.

HON. _____ AND OTHERS.

Gentlemen—Your communication of the 4th instant in respect to the candidacy of Mr. _____ for reelection as alderman from the _____

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Ward has received that careful consideration by the executive committee of the League to which its subject matter and your positions and standing entitle it. I have also had a personal interview with Mr. ———. This reëxamination of the question presented has confirmed the committee in their conclusion that the League cannot endorse Mr. ———'s candidacy for reëlection. This conclusion is not due to the influence of Mr. ———'s friends, as you suppose. It rests solely on the public record of Mr. ———. As alderman, he voted for the Universal Gas, Calumet and Blue Island, General Electric, and other questionable ordinances.

You say: "You will find in every instance where he is charged with having voted for a so-called 'boodle' ordinance it was not done corruptly, but that he might secure votes for some meritorious measure which would benefit the whole people." We regard this defence of Mr. ———, which is put forward with confidence by men of your standing, as painful evidence of the low standard by which the public conduct of city officials has come to be measured even by good citizens. Gentlemen, has it not occurred to you that the defence which you suggest for Mr. ———, that he gave his vote for corrupt measures in exchange for votes for meritorious ones, is a defence which is equally available to the most notorious boodler in the council? Do you not know that this is one of the most insidious and common forms of legislative corruption? Would you have a reform movement endorse the support of corrupt ordinances in exchange for the votes of their promoters for meritorious measures? We cannot believe that this is what the public expects of the Municipal Voters' League. It is the unanimous opinion of the executive committee, reached after careful and unprejudiced examination, that Mr. ———'s official record does not justify the renewal of his commission to exercise a great public trust.

Our standard, only aggressively honest and capable men for city officials, may now by comparison seem high, but we believe it to be the only true one. We may not at once secure such candidates in all cases, but we can at least make public the records of all candidates. We intend that no man having the public record of Mr. ——— shall return to the council as the representative of reform.

By order of the Executive Committee,

President.

The publication of these letters made a sensation. The supposed writer of the first, on whose official letter head it

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appeared, announced that it was written by the alderman himself, and that he signed it without reading it. The others also informed an interested public that they endorsed the letter without reading it, supposing it to be "all right." The correspondence was mailed to the registered voters of the ward. The press published and fully discussed it editorially. The candidate, who had been renominated in the meantime, failed of reelection by some eight hundred votes, although his party carried the ward for town officers at the same election by a majority of about twelve hundred.

The open headquarters which the League maintains for about two months prior to each aldermanic election, is the clearing house of the aldermanic campaign. It is thronged with party representatives, candidates, and citizens. These come seeking to influence the executive committee for or against particular candidates, both before and after the nominations are made. Suggestions, remonstrances, and eulogies pour in from all quarters. Blank inquiries are mailed to all candidates as soon as announced or nominated. Letters of inquiry to references follow. Trained employees of the committee scour the city for information; often different ones working separately are detailed on the same case. All who come are patiently heard, and the facts are carefully ascertained. It is remarkable how quickly the machinery employed usually brings to the committee sufficient facts upon which to base a safe conclusion. As the campaign progresses, candidates often bring false charges, made by or on behalf of opponents, to the attention of the committee. A care-

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ful inquiry, sometimes a "confrontation" in the presence of the committee, follows. A simple bulletin from the League, to the effect that it has been investigated and found to be without foundation, published in the newspapers lays a charge. Thus, incidentally, the League is able promptly to suppress false charges and keep the contest on the facts and the real issue.

The president and secretary, at great personal sacrifice, give practically their whole time to the work during the active campaign. They are assisted by the best obtainable employees. The executive committee meets for an hour or more late in the afternoon of almost every day. No final action on candidates is ever taken without its consideration and vote.

EFFECT ON NOMINATIONS

The officers of the League are coming more and more to be consulted in advance concerning proposed nominations. Party managers in many wards, where its support has become vital to success, submit names of proposed candidates. Several are often suggested and rejected before one, after careful inquiry, is approved. Then, too, a proposed candidate, who is regarded as objectionable, and his supporters are frequently called in and advised that the League will oppose his nomination and election unless it can be satisfied of his fitness. The confidences of these conferences are faithfully kept. Party managers are given full credit for fit nominations, however much they may have been influenced by the committee. No announcement is ever made that a particular party nomination has

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been thus forced by the League. It, however, often participates in support of the better candidate at contested primaries. It is its policy not to suggest candidates in the first instance, but rather to pass on those named by others. When necessary in a given ward, in order to force a good nomination or to have at least one fit candidate, it promotes the nomination of an independent by petition. When the candidates are in nomination it takes an active part in the wards where there is danger of the election of unfit men.

INFLUENCE ON ELECTIONS

Such, in substance, are the methods of the Municipal Voters' League. What are the results? It has now participated in five successive aldermanic campaigns, each involving the election of thirty-four aldermen, being one-half of the city council. In its first campaign, that of 1896, twenty candidates having its endorsement, two of them independents, were elected. Five others were given a preference over their opponents. Of the first class, fifteen throughout their term of two years resisted all adverse influences and stood faithfully for public interests. All the others sooner or later joined "the gang." The League in 1898, in its preliminary report on the retiring members of the council elected in 1896, recommended the faithful fifteen for reelection and nineteen for defeat. Of the first group three declined renominations; the others were renominated and eleven of them reelected. Of the nineteen condemned by the League ten failed of renomination and all but three of reelection. The street railway fight being on, an unusually large number of ex-members of

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bad record sought in this campaign to return to the council. Of twenty-five of these but six were nominated and three elected.

The results of the League's work in ridding the city of the notorious council of 1895 are in some measure indicated by the following tables:

FIRST YEAR, 1896*

Outgoing aldermen with bad records.....	26
Failed to secure renominations.....	16
Renominated and reëlected.....	6
Renominated and defeated.....	4

The League's recommendations were followed in twenty-five wards. In five it was unsuccessful. In four it made no recommendations.

SECOND YEAR, 1897

Outgoing aldermen with bad records.....	27
Failed to secure renominations.....	15
Renominated and reëlected.....	3
Renominated and defeated.....	9

The League's recommendations were followed in seventeen wards. In thirteen it was unsuccessful. In four it made no recommendations.

THIRD YEAR, 1898

Outgoing aldermen with bad records.....	19
Failed to secure renominations.....	10
Renominated and reëlected.....	3
Renominated and defeated.....	6

*The League recommended but two for reëlection.

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The League's recommendations were followed in twenty-three wards. In eight it was unsuccessful. In three it made no recommendations.

FOURTH YEAR, 1899

Outgoing aldermen with bad records.....	23
Failed to secure renominations.....	18
Renominated and reëlected.....	2
Renominated and defeated.....	3

The League's recommendations were followed in twenty-five wards. In each of two wards, where vacancies were to be filled, the candidate of each party commended by the League succeeded. The Democratic candidate for mayor carried nearly all the wards. In seventeen, wherein he had majorities, Republican candidates for the council having the endorsement of the League succeeded.

FIFTH YEAR, 1900

Outgoing aldermen with bad records.....	16
Failed to secure renominations.....	5
Renominated and reëlected.....	9
Renominated and defeated.....	1
Renominated by petition and defeated..	1

The League's recommendations were followed in seventeen wards. In seven others, it commended all the candidates as qualified. Twenty-five of the thirty-seven successful candidates had its endorsement over all opponents or its commendation with others. Three of these ran as independents. In this campaign the party organizations in several of the worst wards openly joined forces

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to return members condemned by the League. To this brazen performance is due the reelection of so many condemned members this year. The "gang" of 1895 is no more. Four only of its members, now in a hopeless minority, linger on the scene of their former exploits to mourn the good old days when "aldermanic business" was good. The feeble band of faithful members of five years ago became a minority of one-third, enough to sustain the veto of the mayor, after the first campaign of the League; two years later it became a majority; one year ago it rose to two-thirds of the council and organized its committees on a non-partisan basis.

These results are due to a growing disregard by the voters of party names, and to entire confidence in the singleness of purpose and freedom from partisan bias of the League. There has been no waiting for ideal conditions as a basis for reform. The League has seized and used the means at hand. Party organizations, fattened on the spoils of a great city, by force of an aroused public opinion have become for the moment, if somewhat halting, at least fairly efficient instruments of reform.

The gain cannot be shown by mere statistics. The attempt to secure the election of men who are both honest and capable has in large measure succeeded. Each year it has been found easier to secure qualified candidates. An increase in salary from \$3 per week to \$1,500 per year has contributed to this end. The council now contains many men of character and force, some of them being citizens of prominence and large personal interests. While some untried men commended by the League fall

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by the way, about three-fourths of them remain true. No general "boodle ordinance" has been passed over the mayor's veto since the first election in which the League participated. Public despair has given place to a growing belief that the city government may be redeemed and made representative of public interests. It is no longer a good investment for public service corporations to advance large sums for the "campaign expenses" of notorious boodlers. It has again become an honor to be a member of the Chicago council. A single term of service brings a capable man an honorable city reputation.

THE STREET RAILWAY PROBLEM

These changes have been forced against the most powerful opposing forces. The main franchises of the great street railway corporations of Chicago are soon to expire. From 1896 they actively sought renewals on their own terms. By grossly improper means, they secured in 1897 the passage in the legislature of the so-called "Allen bill," permitting extensions of street railway franchises for fifty instead of twenty years as before. After the enactment of this law certain of the companies again and again brought every possible influence to bear on the members of the Chicago council to secure fifty-year extensions in utter disregard of public rights. It is believed that as much as \$50,000 each was finally offered for votes. The council stood firm. A clear majority spurned all improper advances. The attempt ended in complete failure. Late in 1898 it was abandoned.

The enactment of the "Allen bill" led to a remarkable

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demonstration of the irresistible power of an aroused and persistent public opinion. . . .

WHAT IS THE NEXT STEP?

Those whose fortune it has been to direct the hand-to-hand work of the Municipal Voters' League of Chicago know full well that but a beginning has been made, that only the edge of a great problem has been touched. A powerful and resourceful enemy is still at bay, ready to take instant advantage of any failure of public leadership. The question is how to make what has been gained the basis for the recovery of representative government. It is clear that disinterested and intelligent leadership is alone wanting. It is also apparent that the methods thus far employed by the League cannot be relied upon to work a permanent cure of the disease. This is private greed. It appears in the form of a copartnership of the bosses, masquerading in the names of the national political parties, and the public service corporations. These monsters, clasped in a close embrace, wallow together in municipal spoils. One, perhaps both, must be destroyed. They are the source of municipal misrule.

Recent events in Chicago give point to these observations. The influence of the League was never more potent than in the late municipal campaign. Fifty-five of the eighty candidates voted for at the polls voluntarily came in, signed the League platform,* and on it appealed for

*THE LEAGUE PLATFORM

It is my belief that the office of alderman is one involving service to the whole public and non-political in its nature. I, therefore, believe

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public support. Twenty-five of these were elected. The pledge to organize the council committees on a non-partisan basis of integrity and fitness was so definite that it was expected it would be faithfully kept. But the city is this year to be redistricted. The Democrats having for the past two years made an inexcusable number of bad nominations, the Republicans after the election found themselves in a large majority. Party pressure proved too strong to resist. All but one of the Republicans

in organizing the council committees on a non-partisan basis of integrity and fitness; and I further believe that in redistricting this city the question should be decided upon the basis of equality of population, facilities for voting, and due regard to natural boundaries; and that the city should not be gerrymandered in the interest of any political party.

I believe that the finances of the city should be so regulated that the appropriations cover the actual necessities and the expenditures be kept within the revenues. The city should have a system of auditing and accounting as strict and clear as that of any well-regulated business corporation.

I believe that the city should receive adequate compensation for all grants to private persons or corporations of special privileges in, over, under, or across the public highways, or for the use of public property.

I believe that ordinances conferring franchises for street railways, telephones, and similar public utilities should be limited to a period not exceeding twenty years.

I believe that all such ordinances to a given company should expire at the same time.

I believe that all such ordinances should provide the opportunity for public ownership on fair and reasonable terms.

I believe in the merit system of civil service and in the strict enforcement of the present civil service law.

If elected I will spend requisite time in looking after the physical and sanitary needs of my ward.

I place this platform before my constituents and the people of Chicago and pledge myself to work and to vote in committees and on the floor of the council to carry out its principles.

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entered a party caucus and there named the committees of the council for this year. While care was taken to constitute the committees about as last year, their published defence of this action is not well received. The League promptly denounced the party caucus as an open betrayal of a solemn pledge. It is generally so regarded.*

Thus the step toward non-partisanship taken last year has been retraced. Men elected to act for the people have betrayed their pledges in order to represent in the council the local bosses of a national political party. This unlooked-for reverse has forced the executive committee of the League to consider whether the time is not ripe for the next great step in municipal reform. They have been driven to the conclusion that the law should be so amended as to prohibit the appearance on the official ballot of candidates for municipal office under party names, or their nomination except by petition. Quite likely such an amendment will be urged in the next legislature. Until this reform shall be secured by law, the League is likely more and more to promote independent candidacies. It views with increasing distrust the presence in municipal politics of a power that can compel men of standing openly to betray their most solemn promises to the people. Whatever the discouragement of the moment, there is no disposition to falter. The League will go forward. The movement for which it stands must be persistent.

*This is the last time that the council has been organized on a partisan basis.—EDITORS.

THE CIVIL SERVICE SITUATION *

CIVIL service reform, in its progress, has passed the experimental stage. The merit system is now generally acknowledged to be a practical, and indeed a fundamental reform. It everywhere means open competitive examination for appointment to the lower grades of the civil service, with promotion to its higher grades solely upon ascertained fitness. Its friends, fully convinced of its efficacy to cure the monstrous abuses of the spoils system, insist upon its extension to the entire public service,—National, State, and municipal. Its enemies, at last aware that it is more than a transient dream of theorists and is in fact a force that threatens to overwhelm them, have united for its overthrow. Beaten at every point in argument, its opponents now at some points oppose it by open appeals to private and party greed for spoils,—at others by attempts to direct its operation. Where afraid to attempt its overthrow by direct assault, they seek to destroy it by “a warfare of underground sapping and mining” (Carl Schurz).

Civil service reformers long appealed for an opportunity to demonstrate the utility of the merit system. The spoilsmen at first made no attempt to meet its claims by argument. They simply applied to its advocates such choice names as “man milliners,” “theorists,” “literary

* From internal references, it is probable that this article was written during the latter part of the year 1897.

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fellars," "Sunday-school politicians," and the like. This proving insufficient to deter the reformers, the spoilsmen offered pretended arguments to the effect that the merit system is un-American, calculated to create a life tenure, and generally visionary and impracticable. But in spite of their false cries, under the most adverse conditions, often subject to the hostility of appointing officers, its appointees thrown in among hordes of spoils barbarians, the merit system has gradually won its way into popular favor. In the great departments at Washington, and in the revenue and post offices of the country, it is now able to show what may be expected of it everywhere under favorable conditions, after the spoilsmen have been driven out.

One of the most notable achievements of civil service reform was its embodiment in the constitution of New York in 1894. This seemed to prepare the way for its application without further resistance "to all appointments in the civil service in all the public departments of the State." But the spoilsmen of New York are perhaps the most lawless and shameless specimens of the evil brood to which they belong. Indeed, under the recent rule of Hill and the present reign of Platt, the State seems, for the time being, to have lost all but the forms of popular government. The governor and majority members of the legislature in no sense represent the people. They merely register the will, without regard to public interests, of an odious and irresponsible political pirate. These forces, thus directed, have persistently neglected, since the adoption of the constitutional provision in 1894, to enact

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appropriate legislation to give it full effect as commanded by the constitution itself. They have even contended in the courts that the insufficient civil service act of 1888 was annulled by the adoption of the constitution, and have strenuously denied that the constitutional provision is self-executing.

The courts of New York, however, remain true. Indeed, these courts constitute the one political institution of the State which, under the Platt reign, remains responsive to public interests and faithful to the purpose of its creation. They have, from the outset, liberally interpreted the civil service laws and given them full effect in letter and spirit. The Court of Appeals, in view of its record on this subject, has the right to say,—as it does in the case of *People vs. Roberts* (148 N. Y. 364): “This court, upon more than one occasion, has, with entire unanimity, expressed its approval of the principle, and exercised all of its powers in every proper case in aid of all laws intended to carry out the idea.” That great court has also declared within this year that “the duty rests upon the legislature and the courts to enforce the civil service provisions of the constitution in their letter and spirit.” *Chittenden vs. Wurster* (152 N. Y. 364). The courts of the State have again and again declared the constitutional provision to be self-executing to the extent that appointments made contrary to it are illegal, and have held that the question to what extent competitive examination for appointment is practicable is a judicial one. In the absence of appropriate legislation to give full effect to the constitutional requirements that “appointments and pro-

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motions in the civil service of the State, and of all civil divisions thereof, . . . shall be according to merit and fitness, to be ascertained, so far as practicable, by examination, which so far as practicable, shall be competitive," they have given full effect to the insufficient civil service act of 1888.

The New York legislature at its last session under the leadership of the governor of the State, as cheap and nasty a spoilsman as has yet appeared anywhere, passed an act providing for two examinations to ascertain the "merit and fitness" of candidates for appointment,—one by the civil service commission to determine their relative "merit," and one by or under the direction of the appointing officer to satisfy him as to their "fitness." Each examination is to cover one-half of the rating of candidates on the scale of one hundred. It is not even provided that the so-called "examinations" to ascertain "fitness" shall be competitive, or that it shall be public or made matter of record. It may be conducted by "some person or board designated by the person holding such power of appointment,"—in fact by a political committee, the chief of a party machine, or even "the barkeeper of the nearest saloon," if so designated by the appointing officer.

Mr. Schurz, in his powerful address of protest to the governor, suggested that this scheme of two examinations to ascertain the "merit" and "fitness" of candidates was the same as if in case a candidate was required to be "hale and hearty," "one physician should examine him as to whether he was hearty and the other as to whether he was hale." It is expected that the Court of Appeals will make

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short work of this precious scheme to evade the constitution. The court has already, in a case decided since the passage of the act, said: "It is said that each officer having appointments to make could himself examine the applicants for position, and in that way determine who should be the appointee by a competitive examination. Undoubtedly, *but it will readily be seen that this system would practically nullify the civil service law and bring it into disrepute.*" *Haight, J.* (152 N. Y. 856.)

The order of President Cleveland of May 6, 1896, adding over forty thousand positions to the national classified service and so revising the rules as to raise the presumption that all persons serving in the executive departments of the government are included unless expressly excepted, was regarded not only as the greatest advance of the reform but as practically completing what might be done by executive action without further legislation. Mr. Cleveland's administration also sought to solve the difficult problem of bringing the fourth-class postmasters within the classified service by the consolidation of smaller offices with the larger classified offices in such a way as to make the smaller offices mere sub-stations and their present postmasters superintendents or clerks within the classified service of the principal offices. Postmaster General Wilson carried this plan far enough to test its practicability and, by about one hundred such consolidations, to effect an annual saving in expense of \$48,000. To extend the reform the postmaster general sought a transfer by the last Congress of funds from the appropriation for postmasters' salaries to that for clerk

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hire, asking for a total appropriation of \$500,000 less on this account than before. Congress not only refused this reasonable request, but actually curtailed the power of the postmaster general to make such consolidations by limiting them to the county of the principal office and five miles from the corporate limits of the city of such office. In vain was the plea of the postmaster general that the extensive realization of the plan would improve the service, insure prompter and better accounting, require less bookkeeping and correspondence, secure better inspection and supervision, increase and improve the facilities of the people, and thereby augment the revenues and greatly reduce the expenditures. Mr. Schurz, in his last annual address as president of the National Civil Service Reform League, very properly characterizes this performance.

He says:

Look at this spectacle. The representatives of the people in Congress, charged with the duty and entrusted with the power of taking care of the people's convenience and of the people's money, deliberately put aside a proposition submitted to them by a faithful officer of the government to promote the people's convenience, and to save the people's money — nay, they tell that officer that he shall not go on promoting the people's convenience, improving the people's service, and saving the people's money. Is it too much to say that this means robbing the people of that money which might be saved and is now unnecessarily expended, and of the accumulating millions henceforth to be unnecessarily expended? And why all this? The reason is notorious. This was done because the consolidated post offices would pass under the civil service rules, and members of Congress would have fewer postmaster-ships to distribute among their hangers-on. The plan was arrested, because it was good. . . . Is it not time that

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good citizens should unite to tell the politicians in language vigorous enough to be heeded that this outrageous trifling with the people's money must stop?

The Republican platform of 1896 declares that the civil service law "shall be thoroughly and honestly enforced and extended wherever practicable." Mr. McKinley himself definitely promised, in his letter of acceptance, that his party "will take no step backward upon this question. It will seek to improve but never to degrade the public service." These declarations, especially in view of Mr. McKinley's excellent record on the subject and the dangerous attitude of the opposition, led the friends of the merit system in large numbers to support his candidacy, and they rendered no small service in securing his triumphant election. Yet, despite all this, the spoilsmen of the Republican party have now for months openly advocated the repudiation by the president of his personal and party pledges in the interest of what they are pleased to term a "rational civil service." So noisy and confident did they become that in July last there was serious fear that the rules were to be extensively amended in the interest of the spoilsmen. Instead of this threatened calamity, the President by executive order of July 28, 1897, amended the rules so as to provide that "no removal shall be made from any position subject to competitive examination except for just cause, and upon written charges filed with the head of the department or other appointing officer, and of which the accused shall have full notice and opportunity to make defence." It is not too much to say that, under all the circumstances, this order

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is one of the greatest victories of the reform. Prior to the adoption of the Illinois act of 1895, reformers hesitated to place any restraint upon the power of removal for any reason satisfactory to the appointing officer. It was believed, with good reason, that such officers would not be apt to remove efficient subordinates to make way for others, if obliged to take them from the eligible list. But it was found that injustice was often done both to the service and to individuals. The framers of the Illinois statute took the first step in advance by providing that "no officer or employee in the classified service . . . shall be removed or discharged except for cause, upon written charges and after an opportunity to be heard in his own defence." From this provision laborers and "persons having the custody of public money, for the safe-keeping of which another has given bonds" (Sec. 12), are excepted.

These provisions, it will be observed, do not undertake to define what causes shall be sufficient to justify removals. It is not believed that they give to those in the classified service any vested right to continue therein, or even to appeal to the courts to determine whether any alleged cause of removal is sufficient to justify it. They rather serve to protect the classified service from arbitrary and unjust removals by requiring appointing officers to make matter of public record, with an opportunity to be heard, the reasons for their action. This will no doubt operate as a great check upon improper removals. In this view, the recent decisions by certain of the federal courts, holding that the new rule does not create rights which the courts

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will enforce, must be regarded as sound. The president may rigidly enforce the rule as binding upon appointing officers, though those in the classified service derive no legal rights under it.

The civil service situation in Chicago is just now critical and of special interest. Our statute can only be properly interpreted by a study of its relation to the earlier legislation. It is not a pioneer in the field of civil service reform. It follows the present English system, the national act of 1883, the Massachusetts statute of 1884, and the New York statute of 1883 and constitutional provision of 1894. In England a change of administration affects only the directing heads of the great departments of government, the prime minister himself having only the appointment of his private secretary. Under our federal statute, by executive action of all the presidents since 1883, the rules have been gradually extended to include disbursing officers and all but the heads and immediate subordinates of the great departments, revenue and post offices of the government.

The New York statute of 1883 was but a first and cautious step. From its operation were excluded "officers elected by the people, and subordinates of any such officer for whose errors or violation of duty such officer is financially responsible, and the head or heads of any department of the city government" (Section 8). The Massachusetts act excepts from its operation only "elective and judicial officers and officers whose appointments are subject to confirmation by the executive council, a city council, or a school committee," "heads of any

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principal department in a city," and a few others. The constitution of New York in 1894 went still further in providing that "appointments and promotions in the civil service of the State, and of all civil divisions thereof, . . . shall be according to merit and fitness, to be ascertained, so far as practicable, by examination, which so far as practicable, shall be competitive."

The Illinois statute was the result of this experience. It was based directly on the National, New York, and Massachusetts acts. It differs from these statutes only in that it goes further and is more stringent in its provisions for carrying into effect the great purpose which they all express. None of the other acts and rules under them (until this year), for example, placed any restrictions upon removals. Our statute provides against removals, except as to "laborers or persons having the custody of public money for the safekeeping of which another person has given bonds," without written charges and an opportunity to the person affected to be heard. The penalties for violation of the act are also more severe than for violations of the earlier statutes.

Our statute was, in fact, intended to express the results of the entire experience under similar measures in this country prior to its enactment and to improve upon them. It was hailed the country over as the most perfect statute on the subject and as the one best adapted to secure the reform which is so earnestly desired by all good citizens.

Thus it appears that the legislation on this great sub-

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ject has not tended to become less, but more and more, inclusive. The national act first applied only to a few thousand places, including all but heads of the great departments and offices, and a few others. The excluded "head or heads of any department" of the New York act has become the "heads of any principal department" in the statute of Illinois. Unrestricted removals under all the other acts give place in our statute to removals, in most cases, only for cause, to be ascertained upon written charges after an opportunity for the accused to be heard. We have not merely followed the lead of others, adopting their statutes with the liberal interpretation of their courts, but have done more. Our statute was intended to place Illinois at the head of the powerful forces which are to-day striving to secure an orderly administration of government.

This act was adopted by an overwhelming popular majority at the Spring election of 1895. Mayor Swift found most of the departments filled with spoilsmen and their retainers. No one contends that these products of a bad system should have been retained, or blames him for their removal. He, however, lost a splendid opportunity in his failure to appoint their successors under the new system and thus give the reform a right start. In the sixty days before the law went into effect, the mayor and his chief lieutenants turned out the old gang of spoilsmen and stuffed the departments with a new one. He partially atoned for this outrage by naming an admirable commission and giving them effective support through the remainder of his administration.

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It was the intention of the law to create a non-partisan, independent, and continuous commission, which should not change with the incoming of a new city administration. This commission is charged with the administration of the law and is in no way responsible to or under the direction of the mayor. It is its duty to enforce the law, his to obey it.

The election of Mayor Harrison involved a party change of administration. His campaign resounded with the war whoops of the spoilsmen and liberal promises on his part "to turn the rascals out." Had the new mayor contented himself with the removal of Mayor Swift's spoilsmen and the inefficient appointees made from the eligible list, if any, and appointed their successors from such list, his acts would have met the cordial approval of reformers. But this is not what happened. Mayor Harrison assumed at the outset that the civil service commissioners are his subordinates, and that he is entitled to have a majority of them in political and personal accord with himself. As well might the President contend that the judges of the federal courts should be in political and personal harmony with him. Proceeding upon this vicious assumption the mayor, having made one of the old commissioners comptroller, removed the two remaining members upon absurd charges afterwards trumped up to comply with a provision of the statute requiring him to file his reasons for such removals. A majority of the new commission, which as a whole might easily have been made either better or worse, were chosen from the mayor's personal and political supporters.

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The new mayor, upon his inauguration, filled most of the higher places in the service with avowed and active enemies of the civil service law. These officials, with some honorable exceptions, in coöperation with the council, are doing what may be done to place the merit system in a false light before the public and render the act inoperative.

The corporation counsel, almost immediately after his appointment and in order not to "deprive the people of the benefits of a change of administration," placed a construction upon the words, "heads of any principal department of the city," contained in Section 11 of the civil service act, removing from its operation, as construed by the first civil service commissioners, forty-eight positions "among others."

The present civil service commissioners' "opinion" (addressed to the mayor, May 22, 1897), placed a construction upon the act giving to the mayor "the benefit of the doubt" as to positions which "should be taken out of the classified service."

The council, on June 1, 1897, by ordinance created a division of the city laboratory to be known as the "milk division," the superintendent to be "appointed by the mayor on recommendation of the commissioner of health, and with the consent and approval of the city council." (*Council Proceedings*, p. 296.)

The council, on June 8, 1897, created the "office" of private secretary to the assistant superintendent of police, to be appointed by the mayor, with the advice and consent of the council. (*Council Proceedings*, p. 344.)

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The council, on June 14, 1897, to relieve "hundreds of families" from the "alternative" of "death by starvation or the poorhouse," and because "the iniquitous, un-American civil service law stands as a barrier against those who are disposed to lend a helping hand to suffering humanity, by relieving those in dire distress," directed the mayor and commissioner of public works to confer with the civil service commissioners to arrange "to place gangs of men to work alternately when required." (*Council Proceedings*, p. 378.)

The council, on the same date, by ordinance established a "department of the municipal government of the city of Chicago," to be known as the "bureau of license investigation," and to have a superintendent and eleven assistants, subordinate to and under the direction and control of the city collector." By this ordinance it is also provided that the superintendent shall be the "head of said bureau," and that he and all his assistants "shall be appointed by the mayor by and with the advice and consent of the city council." (*Council Proceedings*, p. 406.)

The committee on civil service of the council, also on June 14, 1897, unanimously reported forms for four ordinances, with recommendations that they pass. The committee by said ordinances proposed to designate as "heads of principal departments," as said term is used in Section 11 of the civil service act, numerous "public officials" and "all employees of the city of Chicago receiving \$3.00 or less per day, as compensation for work," the said "officials" to be selected by the mayor and con-

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firmed by the council; to make the "head of each and every department, bureau, or division of work in the public service of Chicago," and certain experts, private secretaries, head assistants and others, subject to confirmation by the council; to make all "transfers, appointments, discharges, and promotions in the fire and police departments" subject to the order of the mayor and approval of the council; and to authorize the city clerk to appoint his chief clerk, with the consent of the council. (*Council Proceedings*, pp. 396-398.)

The council, on June 28, 1897, passed as an administration measure an ordinance which provides that the list of "public officials" named in it "shall be designated as 'heads of principal departments,' as said term is used in Section 11" of the civil service act, and "shall be nominated by the mayor and shall be confirmed by the city council." (*Council Proceedings*, p. 474.)

Well might the mayor, in view of these performances, declare at the very opening of his communication to the council on June 28, 1897 (*Proceedings*, p. 472), that "up to the present time each meeting held by your honorable body since the recent municipal election has been made noteworthy, either by resolutions or by ordinances, having for their purpose a desire to attack the civil service law."

The opinions and ordinances above named, though not inclusive, indicate the character of the official action thus far taken by the present city administration of Chicago in respect to the civil service law. If what has thus been attempted by the present municipal authorities of Chicago

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is valid, the council may pass a simple ordinance requiring all non-elective officials and employees of the city to be nominated by the mayor and confirmed by itself. If what has been attempted is valid, such an ordinance would destroy the civil service act.

The attorney general of the State has commenced proceedings in the Supreme Court to compel the classification of the positions in dispute and incidentally to set aside the ordinance of June 28 as an unreasonable and excessive exercise of such limited power as it is believed the council has to interfere with the civil service law. It would not be proper for me, as one of the counsel in these cases, to discuss them here. Suffice it to add, that if the attorney general succeeds, the law will be enforced despite the hostility to it of many of the principal officials of the present administration.

The merit system of appointment securely rests upon its direct advantage to the public service. It wholly rejects the spoils theory that public office exists for private profit, honor, or advantage in any form. It accepts without qualification the doctrine that public office is a public trust. It claims that all selections for the public service should be made solely with a view to the public welfare. It holds that in every public position the opportunity to render a public service is paramount, and that whatever of personal honor and profit attaches to it is but incidental. With these claims we might rest the argument for the merit system. We may, however, go further. It secures to all the right to compete for public employment, the right of freedom of contract with the largest employer of

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skilled and unskilled labor. No one has a right to be or remain employed by the public, but all have an equal right to compete for public employment. One of the main objects of all the civil service laws is to preserve this right.

The Supreme Court of Illinois has jealously guarded the fundamental rights of citizenship. Within a few years it has pronounced a series of great judgments broadly interpreting the constitutional provision that "no person shall be deprived of life, liberty, or property without due process of law." There is, as a result, perhaps no other commonwealth in which the fundamental rights of free men are so carefully protected.

The fundamental principle upon which liberty is based, in free and enlightened government, is equality under the law of the land. It has accordingly been everywhere held, that liberty, as that term is used in the constitution, means not only freedom of the citizen from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers and faculties, and to adopt and pursue such avocation and calling as he may choose, subject only to the restraints necessary to secure the common welfare. (*The Braceville Coal Co. vs. The People*, 147 Ill., 66, 70.)

The privilege of contracting is both a liberty and property right. . . . The right to use, buy, and sell property and contract in respect thereto is protected by the Constitution. Labor is property, and the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other property owner. . . . The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty. (*Ritchie vs. The People*, 155 Ill., 98, 104.)

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These fundamental doctrines have been given full effect in sustaining the right of citizens to compete for private employment. But all citizens, having the proper requirements of age, health, and moral character, have a right to compete for public as well as private employment. The spoils system everywhere denies and ignores this right. It has placed and seeks to perpetuate an irresponsible aristocracy between the people and their government. It is an odious conspiracy for personal ends, a mere mercenary survival of the feudal forces against which modern democracy has everywhere won its way. It has, by means of public plunder and the blackmail of vulnerable private interests, created a despotic government unknown to the laws—of bosses, by bosses, for bosses—which largely controls both the elective and appointive entrances to public service and employment.

The merit system, on the contrary, is in entire accord with democratic institutions. It seeks to restore their government to the people. It recognizes and secures to all citizens their right to compete for public employment. Thus the National and Massachusetts acts provide for the punishment of officials and others who shall "defeat, deceive, or obstruct any persons in respect of his or her right of examination." The constitution of New York, adopted in 1894, requires all appointments to be made upon "examination which, so far as practicable, shall be competitive." Our statute provides that "all applicants for offices or places in said classified service . . . shall be subjected to examination, which shall be public, competitive, and free to all citizens of the United States,

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with specified limitations as to residence, age, health, habits, and moral character." (Sec. 6.) The act also contains other strict provisions to eliminate personal influence and favoritism.

What is competitive examination? It is an examination in which every citizen conforming to certain requirements as to age, health, and moral character has a right to appear, and in which he has a perfectly equal chance with every other candidate—whether rich or poor, whether the son of a hod-carrier or a millionaire, whether Republican or Democrat or non-partisan, whether Christian, Jew, or Gentile—and which gives those who pass the tests of merit and fitness most successfully the best title to appointment—an examination, in one word, which puts all citizens, irrespective of wealth, of social or political influence, of party affiliation, or of religious belief, upon a perfectly equal footing, giving the best man the best chance." (Carl Schurz.)

Nothing short of the merit system, as thus interpreted, is really democratic. Nothing less than the open competition which it provides can secure to all citizens their equal right to compete for public employment. Democratic institutions assume that officers and employees will be selected from the entire body of the people. Elective officials are, at least in theory, so selected. It was once assumed that they would in turn select their subordinates from the whole people, thus recognizing the right of all to be considered in the choice of public servants. We now know how the spoils system has intervened, how it denies the equal right of all to compete for entrance to the public service, how it subordinates that service to personal and party ends. Thus the merit system has become a reform of vital moment, the only available way at once to restore

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the government to the people and secure a worthy public service.

Nothing sounds more plausible than the plea for the discretion of appointing officers in the choice of their subordinates. This plea is the cant of every spoilsman. It was long used as a defence for the entire spoils system, and has now become a kind of "last ditch" to save some of the best berths, and especially those whose occupants have the custody of public funds, from the grasp of the merit system of appointment and promotion. In private business, where political pressure is unknown, such discretion takes the place of competitive examination. In public life, wherever the semi-barbarous maxim, "to the victor belong the spoils," is recognized, the discretion of the appointing officer, to be exercised only in the public interest, is a myth. He merely registers and legalizes appointments to office which have been made for him by the irresponsible chief or chiefs of his party machine.

There is no peculiar mystery requiring an illusive kind of merit and character in officials who have the supervision of the work of subordinates, though in large numbers, or even the custody of public money. Banks, business houses, and the offices of great corporations are full of such positions, most of whose occupants have reached them by a process of slow promotion from the lowest grades of the service. It is the purpose of our statute, in providing for promotions to such positions "on the basis of ascertained merit and seniority in service and examination," to accomplish the same result in the classified service. In order carefully to guard against the promotion to, or

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retention in, a place of financial trust of one whose character is even suspected by his superior, Section 12 provides that no charge or investigation shall be required upon the removal of "persons having the custody of public money, for the safekeeping of which another person has given bonds." This provision of the act and that governing promotions give ample opportunity to secure tried and faithful men for such positions. Such a system as to similar positions works with entire satisfaction at Washington and in the great revenue and post offices of the government. Our statute, if enforced in its letter and spirit, will doubtless give equally satisfactory results. If not, only the legislature has power materially to extend the list of exemptions from the classified service.

There is not time to speak of the various movements to establish the merit system in widely separated States and cities. Suffice it to say that in Pennsylvania and Maryland, in Minnesota and Wisconsin, hopeful efforts toward this result are now being made, that New Orleans, Tacoma, and Seattle have already secured it in their charters, and that in San Francisco, Los Angeles, Denver, St. Louis, and Wheeling steps to the same end have already been taken. Thus the reform grows, its seed finding good soil in every part of the Republic. Nor did it appear any too soon. The vicious spoils system was everywhere sapping the vitality of free institutions. An adequate remedy was necessary for their preservation. It was found in the merit system of appointment, and it only remains to apply this remedy fully and permanently.

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We are still in the midst of the fight for the complete reform of the civil service,—National, State, and municipal. Many victories have been won. There has been and will be no retreat. The final victory may be long in coming, but it will come.

STREET RAILWAY LEGISLATION IN ILLINOIS *

THE story of the street railways of Chicago illustrates at every point the want of foresight that has marked the policy, or lack of policy, of American cities touching the public services now required by urban populations. Recent Illinois legislation, due to the Chicago street railway situation, is of more than local or passing interest. The act of May 18, 1908, known during its stormy passage through the two houses of the General Assembly as "Senate bill No. 40," is believed to be the first general legislative act in the United States providing for the municipal ownership of street railways. Its final passage after six years of earnest effort, despite the utmost opposition of public service corporations and their political allies, is one of the most notable triumphs of public opinion within recent years.

The street railways of Chicago were constructed and have been maintained under statutes and ordinances enacted from time to time since 1858. All statutes enacted prior to the State constitution of 1870, which prohibited such acts, were special. By enactments of 1859 and 1861 three street railway corporations, for the several natural divisions of the city, were created, each to have corporate life for twenty-five years. In 1865, by act passed at the instance of the companies, and by means

* Reprinted from "The Atlantic Monthly," January, 1904.

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which have never been defended, over the veto of Governor Oglesby, their corporate life was extended to ninety-nine years. They claim that this act also operates to extend their rights in the streets of Chicago for a like period. The city has always protested against this legislative disposition of its streets as a violation of the principle of home rule. It also contends that the act violates the State constitution of 1848 in certain particulars.

There are wide differences of view as to the scope of the act of 1865. The city contends that, if valid, it only affects the streets occupied by the companies at the date of its passage. This view is practically that of the Chicago City Railway Company, which occupies the south division of the city, and is owned by local capitalists. This company only claims that about fifteen per cent of its mileage, including important portions of its terminals in the centre of the city, is covered by the act. The allied companies which occupy the north and west divisions of the city, and are largely owned by the Widener-Elkins syndicate of New York and Philadelphia, after accepting during many years grants from the city for extensions and cross lines, strictly limited to twenty years, have recently sought to repudiate all limitations in favor of the city, claiming that the General Assembly of 1865 really intended a system grant, and that every concession since made by the city added so much to their ninety-nine-year possessions.

The city, on July 30, 1888, to set at rest for the time being its controversy with the companies over the Ninety-Nine-Year act, made a general extension grant for twenty years without prejudice to the conflicting claims of the

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parties. Under this and many subsequent grants similarly limited for extensions and cross lines, the cable and electric lines of the companies have been constructed and operated. At no time have the companies operated any of their lines under the Ninety-Nine-Year act unsupported by city grants.

The State, by a general act of 1874, provided for corporations to construct, maintain, and operate "Horse and Dummy Railroads." Under its provisions the cities of the State might make grants of rights in their streets for terms not exceeding twenty years. This act, never sufficient for the protection of the public and private interests involved, gradually became more and more inadequate for these purposes. With the transformation of pioneer horse lines into costly cable and electric systems having hundreds of miles of trackage, great power plants, thousands of employees, and millions of dollars in annual receipts, the need of new legislation became more and more apparent. However, the growth of the public service corporation from small beginnings had been so rapid, its corrupting influence was so insidious, and the citizens were so occupied with their private concerns, that as yet there was no clearly defined public policy to be expressed in new legislation.

The people of Chicago, while still groping for a policy, as long ago as 1896 realized that the employment of private capital in the conduct of the public business is the direct cause of municipal misrule and the real issue in municipal politics; that the question in every American city is whether the public authority shall be exercised by the people for public ends, or by allied public service corporations for

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incorporated greed; and that it will soon be determined whether the city of the people is to become a private municipality.

The city council, for oft-repeated good and valuable considerations, had long been a corporate possession of the street railways and their allied corporate interests. With the first attempt of the people to recover possession of the legislative authority of the city, these interests took alarm. Under cover of the exciting national campaign of 1896 they in advance acquired title to the incoming governor and General Assembly of the State. Early in the legislative session of 1897, the street railway companies caused to be introduced into both houses of the General Assembly a bill to extend for fifty years their disputed rights in the streets of Chicago, in wanton disregard of public interests. This bill promptly passed the senate by a large majority. It was bitterly opposed by the people and press of Chicago, and was finally defeated in the house. The companies thereupon caused to be introduced and passed a simple measure authorizing the several cities of the State to make grants to street railway companies for periods not exceeding fifty years.

The act of 1897 operated to extend the term for which franchise grants might be made by municipalities from twenty to fifty years. It was passed by means that disgraced the State, and aroused bitter feeling from Chicago to Cairo. How keenly the people of Illinois resented this debauchery of their State government was shown a year and a half later, at the next election of members of the General Assembly. Of sixteen retiring senators who voted

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for the obnoxious measure of 1897 but two were reëlected; and of the eighty-two representatives who so voted but fourteen secured reëlection. There was, perhaps, never such a slaughter of State legislators. The memory of the tragedy of 1898 still haunts the corridors of the State capitol at Springfield. Indeed, since that memorable election the General Assembly of Illinois has dealt with much fear and trembling with the subject of street railway legislation. At its next session, by unanimous vote in the house, it repealed the act of 1897, and restored the former statute. The governor who signed the obnoxious measure of two years before gave his official sanction to the new act restoring the situation. Meantime the street railway companies, which for two years had vainly sought fifty-year extensions from the city council of Chicago, stood idly by, unable to avert the bitter humiliation of utter defeat.

Thus closes the first chapter of the story of recent street railway legislation in Illinois. Pending the struggle above outlined, an affirmative public policy for the better control of street railways was taking form in Chicago. Leaders in the movement for the protection of public interests had framed a comprehensive bill looking to public control and possible public ownership, which they offered at the legislative session of 1899. However, public opinion was not yet ripe for constructive legislation in the public interest; and the General Assembly, almost entirely composed of new members, was afraid to experiment with so dangerous a subject.

The movement to make the city council representa-

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tive of public interests had so far succeeded, that from the year 1900 its able committee on local transportation properly assumed the leadership on behalf of Chicago in the effort to secure adequate street railway legislation. The committee, having made an extensive study of the conditions, submitted to the General Assembly of 1901 a comprehensive bill for a general street railway law. It was assumed by the framers of this measure that local transportation should be treated as a monopoly; that, while conducted by the public service corporation, it should be subjected to strict public control; and that the right of municipal ownership should be reserved and safeguarded. The bill, drawn on these lines, although ably supported by the council committee at Springfield, was strangled in the house committee to which it was referred. After repeated public hearings this committee simply failed to report. The bill was not relished by certain of the street railway interests; and it is believed that the inaction in the house was not solely due to legislative timidity.

Two years now quickly passed, during which the struggle on behalf of public interests steadily gained ground in Chicago. The general extension ordinance of 1888 was to expire on July 30, 1908. In the Spring of 1902, under a recent act permitting the submission of public questions to popular vote, the electors of the city, by a majority of about five to one, expressed their opinion in favor of the municipal ownership of the street railways. However, as many grants of particular streets made at different times to the companies will not expire

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for several years, and the city is not in financial condition for so great a purchase, early municipal ownership is impracticable even if desirable. The popular vote of 1902 favoring it must be regarded as an expression of hostility to the street railway companies rather than as a demand for immediate municipal ownership.

The failure of the comprehensive street railway bills of 1899 and 1901, and the conservative attitude of leading country members to legislation uniformly branded "socialistic" by the owners of the securities of public service corporations, led the committee on local transportation of the city council of Chicago and its supporters to propose a more simple measure at the session of the General Assembly of 1908. The end sought was to reverse existing conditions, and place the city, instead of the companies, in control of the situation. To accomplish this, it was deemed necessary to obtain for the city power to acquire, own, and operate its street railways. Hence there arose, prior to the opening of the session, a wide demand for enabling legislation as a condition precedent to the further extension of the expiring franchises of the street railway companies. Bills to empower the cities of Illinois to acquire street railways, and to reserve the right of municipal acquisition in franchise grants, were promptly offered by the council committee and others.

It was known prior to the organization of the house that the effort to pass such a measure would be the chief feature of the session. The governor, representing the spoils faction of his party, of course desired to have his supporters control the house. The party boss of Chi-

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ago, Mr. William C. Lorimer, for purposes of "politics" wished to possess the house. The editor of the *Inter-Ocean*, Mr. George W. Hinman,—brought from New York by Mr. Charles T. Yerkes when he purchased that stalwart party organ and made it the avowed champion of the street railway corporations,—had, in his capacity of organ grinder, acquired some party influence outside Chicago, which gave him a place in the combine to control the house. These allies, by the utmost effort, including the use of State patronage, controlled the caucus by a bare majority and secured the organization. They chose for speaker a weak and unknown man, pledging him to obey orders. It was subsequently understood in the house that as a condition of his election the speaker was required to promise to carry out Hinman's orders on all street railway measures, and to use the gavel when necessary to defeat objectionable legislation. Mr. "Gus" Nohe,—Lorimer's member from his own legislative district,—when asked whether there was to be any traction legislation, replied: "I don't know. I do whatever the old man tells me to; and he tells me to do about traction as Hinman says." Hinman himself announced that there would be no traction legislation at that session. The companies, thus safeguarded by the organization of the house, were not openly represented at Springfield.

The city council of Chicago sent to the General Assembly, with its endorsement, a bill for an enabling act prepared by its committee on local transportation. A special committee, composed in part of members of the council, presented a somewhat more radical measure. Several

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members offered individual bills largely copied from these two. A bill, mainly drafted by the secretary of the Municipal Voters' League of Chicago, and offered in the senate by Senator Mueller, became known as Senate bill No. 40.

While the situation at Springfield was thus confused, the mayoralty campaign came on in Chicago. The platform of the Municipal Voters' League, on which more than two-thirds of the members of the council had been elected, was heartily endorsed by the conventions of both parties. The mayor had actively participated in the development of the street railway programme embodied in the League platform. His Republican opponent, who was without a traction record, actively exerted his influence to advance the "Mueller bill" at Springfield. In part because of his efforts, and in response to the unanimous demand of the public press of Chicago, Senate bill No. 40 passed the senate just after the municipal election in Chicago.

The house organization now set itself to suppress the senate measure and to defeat all street railway legislation, meanwhile pretending to meet the popular demand. Messrs. Lorimer and Hinman went to Springfield and openly assumed personal direction of the house. The municipal committee, composed almost entirely of machine puppets, promptly suppressed the senate bill, reporting a substitute prepared by its chairman, Mr. Cicero J. Lindley, under the immediate supervision of Messrs. Lorimer and Hinman. These open supporters of the Yerkes legislation of 1897 now posed as saviours of the

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city from the alleged evil designs of the reform leaders. They insisted that there should be no grants, even if made from time to time in succession, for more than twenty years in the aggregate. They claimed that their "Lindley bill" was the only genuine municipal-ownership measure. The bill itself was a blundering abstract of parts of the senate bill. The provision of that measure authorizing cities to borrow money on special certificates with which to acquire street railway property was carefully emasculated. Other changes and omissions pointed unmistakably to a desire to protect the existing companies.

It may be asked, Why did Lorimer, absolute dictator of the house organization, offer a substitute for the senate bill in the house? Why did he not suppress the obnoxious measure and have done with the matter? The answer is that public opinion was so aroused in favor of enabling legislation, the suspicion of corporate interference with the public programme was so general, that even Lorimer did not dare openly to defy it. The plan was for the house to pass pretended enabling legislation, and to have it fail between the two houses.

The popular demand for the Mueller bill became so insistent that on the night before the substitute was set for second reading, Mr. Lorimer became alarmed. The Democrats and minority Republicans that night held separate caucuses to plan for the substitution of the senate measure. How many votes could be mustered against the organization, believed absolutely to control the fate of all pending measures in the then closing hours of the

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session, was not clear; but it was evident that the revolt was formidable.

Late that night a memorable conference was held at the call of William C. Lorimer. The place was his private chamber at the Leland House, in Springfield. The time was from about 11:30 p. m. to 3:30 a. m. The subject discussed was the pending street railway legislation. There, in his lair, the boss and his subordinates received the representatives of public interests. Mr. Lorimer was supported by Mr. Hinman, and Messrs. Lindley, David E. Shanahan, "Gus" Nohe, and "Ed" Morris, of the house. Mr. Frank O. Lowden was present in the dual capacity of friend of the organization and of the city. Messrs. Bennett, Mavor, and Eidman, of the council committee, and Mr. Graeme Stewart (late Republican candidate for mayor of Chicago), Mr. E. L. Reeves, and the writer, of the Chicago delegation, were present on Mr. Lorimer's invitation.

We were promptly asked, "What do you want?" Our reply was, "We care nothing for names; but, in substance, we want the senate bill. Nothing less will serve." Mr. Lorimer emphatically told us that the senate bill was dead and buried, and that the only hope of legislation at that session lay in the enactment of the Lindley substitute. We were urged to accept that measure, and invited then and there to submit amendments. It was assumed throughout the conference that we were "up against the real thing"; that whatever amendments Mr. Lorimer might accept that night would go through the house the next day. The attitude of the members of that body on

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the principal question of the session was assumed to be wholly immaterial.

It makes one, who regards the people as the source of political authority and the General Assembly as a means for the expression of their will, feel somewhat queer to participate in a midnight gathering called by a voluntary political boss to dispense legislation of vital public concern. However, under present conditions, only thus may one be sure to get next to the "powers that prey." Thus only may one reach the source of legislation affecting privileged interests and study it in process. In this instance we knew full well that our presence that night behind the scenes was solely due to ominous signs of revolt in the house. The boss sought to avert the storm.

The night wore on in discussion—often heated discussion—of the defects of the substitute bill. That measure, as it then stood, was a bungling imitation of the senate bill, so emasculated as to render it practically valueless. It bore unmistakable marks of tender regard for the traction interests. It appeared on its face to provide for municipal ownership, but withheld the means for its accomplishment. By the omission of the provision of the senate bill, broadly authorizing the municipality to grant streets already occupied by street railways to any corporation, without new frontage consents, it was sought to make it necessary for the city to deal with the present companies and to confirm them in their possession of the streets.

These chief defects of the substitute bill were stoutly defended, the first as an alleged protection to the public

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from the possibility of grants for more than twenty years; the second out of a professed regard for abutting property owners. Amendments to cure several minor defects, and one covering frontage consents so worded as not to fall within the title of the bill, were finally offered us. The boss thereupon delivered his ultimatum, in substance as follows: "You must accept the Lindley bill with these amendments, pull down all opposition on the floor of the house and from the Chicago press, and actively support the bill. It is the Lindley bill or nothing."

A few hours later, as the house assembled to consider the Lindley substitute on second reading, the Chicago delegation, about twenty in number, composed of the mayor, citizens appointed by him, and the council committee,—rejected by practically unanimous vote the Lorimer ultimatum. This action, taken with full knowledge that it might mean present defeat instead of a weak compromise with the machine, was taken the more readily because Lorimer by giving out the proposed amendments had already committed himself to them, and because the representatives of the city believed that it was his intention to pass the amended substitute through the house and kill it in the closing hours of the session.

The fight on the floor of the house was now on. The speaker, who, the day before, on the written demand of a majority of the house, declined to say whether he would recognize the constitutional demand of five members for a yea and nay vote on all proposed amendments, arbitrarily postponed the second reading of the bill to two o'clock that day, and then until nine o'clock the next morning.

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Meanwhile the recalcitrant members were subjected to one of the most severe of machine tests. Some seventy-five bills making appropriations for the State government and the public institutions throughout the State, and many other bills of local or special interest to the members, stood on the calendar on third reading. Those favoring the senate traction bill, led by Mr. Oliver W. Stewart, the able Prohibition member, had given notice that none of these measures should pass until the traction question was acted on by the house.

The organization leaders now presented two carefully chosen appropriation bills for passage. The first was the appropriation bill for the maintenance of the State Normal School at Macomb, the home of Mr. Sherman, leader of the Republican opposition. It was permitted to fail, the friends of Senate bill No. 40, including Sherman, refusing to vote. A second appropriation bill shared the fate of the first. Thereupon the house transacted some unimportant business and adjourned for the day. That night representatives of the city declined an invitation by Mr. Lorimer to another conference.

All now anxiously awaited the morrow. Would the speaker obey his oath of office, permitting a roll call? Was the will of William Lorimer to be more potent than the constitution of Illinois? Was the speaker's gavel to be used to make a minority equivalent to a majority? The action of the speaker would plainly demonstrate to an entire people whether the public service corporation regards its wants superior to all law, whether corporate influence has become the supreme law of a great State.

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The opponents of the Lindley bill believed that the speaker would finally observe his oath. Even they had not fathomed corporate and political insolence.

The next morning, when the house met with packed galleries, the organization made a final effort to break the ranks of the majority. The "Child Labor bill," the most popular measure on the calendar, was called on final passage. The vote disclosed the exact strength of the opposing forces. Fifty members voted aye. Ninety-six sat mute. The majority against the Lindley bill was almost two to one. Had William Lorimer been present, he might have changed the programme; but, having given his speaker orders for the day, he awaited results at his hotel. No one having authority was there.

The crisis now came. The Lindley bill was called on second reading. The speaker, deathly pale, stood at his desk, gavel in hand. Behind him were several ladies. Massed about his desk were twenty or more strong men prepared to defend him. Mr. Lindley offered his first amendment. The opposition leader moved to lay it on the table. Ninety-six members rose in their seats and shouted, "Roll call! Roll call!" The speaker, refusing to hear them, declared the amendment adopted by *viva voce* vote. "You lie!" shouted Representative Allen of the minority. Then amid the utmost confusion and excitement, with the majority members standing on their desks shouting, "Roll call! Roll call!" Mr. Lindley hastily offered his six other amendments. The speaker, without the formality of reading or a vote, declared them all adopted. Without

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motion, he also declared the bill passed to its third reading, beyond the reach of further amendments.

It is impossible to describe the scene or to convey an adequate idea of its intensely dramatic interest. The pale and trembling speaker, protected from flying inkstands by the women placed for that purpose at his back, hastily executed his orders. But he was not thus to escape the utmost personal humiliation. While in the act of declaring the bill passed to a third reading, Representative Burke, of Chicago, unsupported, made a rush for him, only to be roughly thrown to the floor. This was the extent of the so-called "riot" in the house. There was a rush of members to the support of Burke; but the cowardice of the speaker averted a general fight. The rush of one outraged member was quite enough for him. Without waiting for more, he precipitately fled to his room, declaring that the house had taken a recess until afternoon.

All this took place in much less time than it has taken to describe it. The turmoil and excitement at this point were indescribable. The speaker's hasty flight led to a quick transformation. Representative Murray, of Springfield, standing on his seat near the speaker's desk, solemnly called the house to order and said: "It appears that the house is without a presiding officer; I move that Mr. Allen, of Vermilion, be chosen speaker *pro tem*." The motion carried, Mr. Allen took the deserted chair, and the confusion quickly subsided. Within perhaps a minute after the speaker fled, the reorganization was perfected, and a roll call of the house was in progress.

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The manner in which the ninety-six members, whose high duty it was to restore constitutional government in Illinois, performed their unexpected task left nothing to be desired. Their action on that memorable day and in the remaining days of the session will forever remain conspicuous among the landmarks on the difficult road to really representative government. There are men in our public life who are not the creatures of the corporations, men who care for something higher than spoils.

The house now proceeded to recall the Lindley bill from its third reading. When each amendment had been reconsidered and laid on the table, the senate bill was substituted, and the Lindley bill became in fact, if not in name, Senate bill No. 40. Meanwhile the leaders of the majority, in conference in an adjoining committee room, prepared the following preamble and resolution:

Whereas, The speaker of this house has by revolutionary and unconstitutional methods denied a hearing in this house on a roll call constitutionally demanded upon measures of grave import, prepared by those not members of this house, and has attempted by the same methods to force the same beyond the point where they can be amended or calmly considered upon their merits,

Therefore, be it resolved, That, until the house records shall show a reconsideration of the action of this house on House bill No. 864 [Lindley bill] and all amendments thereto, and shall show the adoption of this resolution, and the house shall be assured of the continuous observance during the remainder of this session of the constitutional right of a roll call on all questions and the due consideration of the business of this house, no further votes be cast upon any pending bill by the members of this house without a permanent reorganization of this house.

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The foregoing preamble and resolution were thereupon signed by the ninety-six opposition members and spread on the journal of the house. The speaker *pro tem.* was also instructed to read it to the speaker in the presence of the house on his return to the chair. This was done by Mr. Allen with great solemnity that afternoon. Whereupon the house took a recess, during which the speaker conferred with Mr. Lorimer, Mr. Hinman, the governor, Mr. Lindley, and a few others. Upon his reappearance he presented the following written statement to the house:

I have been approached at different times by parties who intimated to me that I could make money by allowing a roll call on what is known as the Mueller bill or permitting its passage. I do not know whether the parties making the statements were authorized to make them or not, but the statements having been made to me, and some of them recently, fully convinced me that there was something wrong with this effort on the part of outside parties to push this bill. For this reason, I denied the roll call, and have stood firm on this proposition up to the very limit. A majority of the house having signified their desire to have a roll call on this proposition, I wash my hands of the entire matter, and will permit a roll call to be had.

Thereupon Mr. Rinaker, the able leader of the majority, promptly moved the appointment by the speaker himself of a committee of five members to investigate his charges. Upon Mr. Rinaker's suggestion it was determined that no action should be taken on traction or any other important legislation pending the investigation of the charges made by the speaker reflecting on the house, and that the time of adjournment, already agreed upon, should be postponed as long as might be necessary for a

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thorough investigation of the charges, and for the consideration thereafter of the pending street railway measures.

The next morning the press contained a statement from Governor Yates, in which he said:

As to Speaker Miller's action in opposing a roll call on the Mueller bill, . . . I am glad to have the opportunity to say that I believe him to be a brave and honest man, pursuing the only course such a man can pursue under the circumstances. . . . I repeat, that I believe that in opposing what he believed to be corruption, his action is honest and brave, and entitles him to the thanks of every good citizen of Illinois.

The following morning Representative Schlagenhauf of the majority called the attention of the house to a recent editorial published by Mr. Hinman in the *Chicago Inter-Ocean*, which was in part as follows: "And the boodle is ready. And it is in use. And some members already have been bought. And others are negotiating for it. . . . Can money buy the Forty-third General Assembly of the State of Illinois?" Thereupon the house voted to call Mr. Hinman before its bar to give such information as he might have in support of his charges. Afterwards the house referred this matter to the investigating committee. The speaker in appointing the committee passed over Mr. Rinaker, placing on it members a majority of whom it was feared could be depended upon to make a whitewashing report. Thereupon Representative Darrow of Chicago, after a hasty consultation, moved to amend by adding six names of leading members, including Mr. Rinaker. This motion was carried on roll call.

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This committee on April 30 made its report, finding in part as follows:

1. That the evidence produced before us does not establish any real attempt to corruptly influence the action of the speaker of this house.

2. That there was no reasonable or substantial ground for the editorial entitled "Boodle," published in the *Chicago Inter-Ocean* on April 21, 1908, and recited in the resolution introduced by Representative Schlagenhauf; and that the charges therein contained, and as specified further in the testimony of Mr. Hinman, were wholly without truth or foundation as to any member or officer of this house, so far as we have been able to discover. Your committee feels it due to it to say, in view of the publication by Mr. Hinman of his statement read before it, that it regarded the "rumors" so frequently referred to by him, and the jocular remarks attributed to members and others, as utterly unworthy of notice, and the charges reflecting upon citizens of Chicago, employed or selected to represent it, who, in the opinion of your committee, deservedly stand high in the estimation of its best citizens, as wholly outside the purposes of this investigation. It also, in the light of the evidence before it, upon the specific charges made by him, placed no credence upon any of his charges of improper conduct or motives upon their part in connection with the subject of this investigation.

The report of the committee was adopted by a unanimous vote of the house on roll call. Messrs. Lorimer and Hinman, at the close of Mr. Hinman's testimony before the committee, had left Springfield, not to return during the session. Upon the adoption of the report of the committee, the house by unanimous vote directed its municipal committee to report Senate Bill No. 40. Mr. Lindley at once complied, and the bill was promptly passed, with certain amendments proposed and accepted by the repre-

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sentatives of the city, by both houses. It went to the governor the day before final adjournment. He promptly called on the attorney general for an opinion as to its constitutionality, meanwhile requesting both houses of the General Assembly not to adjourn until he had had time fully to consider its terms. The attorney general on the last night of the session gave his opinion to the effect that the constitutional objections to the measure were not well founded. The friends of the bill in both houses, believing that to comply with the governor's request would lead to a veto, and that if the whole responsibility was thrown on him he would approve it, adjourned *sine die*.

The governor took the full ten days allowed by the constitution to determine whether to veto or sign the bill. After two public hearings, and after receiving much advice, both public and private, he finally on the last day approved it with extreme reluctance. How difficult it was for him to do so appears from the memorandum explaining his action, which he filed with the Secretary of State. In that remarkable document, he said:

I would veto this bill, were it not that I have great confidence in the city council of 1908, and great confidence in the people. . . .

It has been urged against this bill by the one man in Illinois who was so courageous as to argue for its veto after it was passed . . . that this bill was passed under the whip and spur of a few newspapers in the city of Chicago. This is true. Worse than that, it was passed by default in the senate and by riot in the house. Intimidation of every possible kind has been resorted to, and within the ten days during which the governor has the right, under the wise and wholesome and hitherto unquestioned veto power of the constitution, to consider and

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examine a bill, these same newspapers have endeavored to complete their usurpation of governmental functions—their “government by newspapers”—by ridiculing and abusing the executive.

I approve the bill in spite of this clamor, because the real question is, Shall the city councils of cities, and the people thereof, be permitted to do a right thing, and not, Has the right thing been brought about in the wrong way?

I believe that this bill should be vetoed, were the General Assembly in session, and that then either this bill should be amended, or a new bill passed without the faults of this bill.

Thus after six years of strenuous conflict between public and private interests, Senate bill No. 40 became a law of the State of Illinois. This struggle, if it be as significant as it seems to the writer, means that the employment of private capital in the conduct of the public business has led us to the brink of government by corporations. If the public service corporation is permanently to participate in the public administration, it must submit to public control. Some basis other than that of vested right must be sought for the security of private capital employed in the public business. That, however, is another story.

It is sufficient here to add that present conditions are intolerable. By means of the act of 1908 the people of Chicago have sought to create conditions that will make the interests of the city and of the companies much more nearly identical, and lead to greatly improved relations, with adequate public control. Conservative men hope that this attempt will succeed. If other solution of the problem be not found, and that speedily, public ownership is inevitable and desirable.

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THE RECOVERY OF REPRESENTATIVE GOVERNMENT *

DEMOCRACY as a form of government has never quite ceased to be on trial. It is in our time newly challenged to justify its claims. Great as are its achievements, it has in some measure disappointed the hopes of its earlier advocates. It has left undone many things which they expected it to have done, and done many things of which they did not dream. This is in part due to the tremendous changes which it has wrought.

Modern democracy has had to meet difficulties which could not have been foreseen. Government until a century ago dealt chiefly with the affairs of rural populations. Cities in the modern sense did not exist. The population of the few great towns was composed mainly of public functionaries and small shopkeepers and artisans. Trade, aside from some commerce by sea, was relatively petty and local. Each community was commercially well nigh, if not quite, independent. Travel was difficult and intercommunication slow. The chief concerns of government were aggressive and defensive warfare, the settlement of the claims of rivals for divine authority to rule, and the perpetuation of the enormous special privileges of the governing class.

It was the vast achievement of military despotism to

* Reprinted from "The World Review," Chicago, May 4, 1901. The conclusion is from a fuller MS. version.

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weld the detached and warring groups of kinsmen known to us as village communities into great nations having definite territories, uniform laws, and comparative freedom from local disorder. It is the still greater achievement of democracy to have recovered something of the local self-government and personal freedom of the village community, while retaining the wide national authority which despotism had won. The evolution has been from self-governing groups of kinsmen, through the military despotism of the feudal monarchy, to the complex and powerful democracy of a continent, from freedom with local disorder to liberty with general security.

The security of life and property and opportunity thus won prepared the way for modern progress. How great that progress is we do not yet realize. We are, however, conscious that it has put a great strain upon the democratic institutions which have made it possible. When we recall the tremendous sacrifices by which these institutions were won we realize why they were hailed as final. With self-government achieved, men turned from the knight-service of feudalism to their private pursuits, leaving the new political machinery more and more to the politicians. Having won liberty and security they accepted and enjoyed them. Under these conditions democracy has thus far worked out its results. That the people would firmly hold and exercise the powers of government was expected. Indeed, government was to be by the people as well as of and for them. Instead of this, while they enjoyed to the full the private liberty and security that were the first fruits of democracy, the powers of their government have

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passed more and more into the hands of political bosses and party managers. That the complex machinery of popular government has, under such conditions, fairly performed its functions must be conceded. In fact, that life and opportunity and property have been so widely secured under so imperfect an administration of democratic institutions, is conclusive of their superiority.

The security of life and opportunity and property, though fundamental, is by no means all that democracy holds in its keeping for the race. Indeed, it is but the basis for the achievement of what is most worthy. On this foundation within a century has been reared a superstructure at which we may well marvel. This material achievement, with its vast industries, its extraordinary facilities of transportation, and its great cities, has added greatly to the task of government. This is especially true in America, where modern democracy has been least trammelled, and where its tendencies may be most profitably studied.

The very success of democracy has here brought it face to face with problems of government which the founders of the American commonwealth could not have foreseen and for which they made no adequate provision. Political institutions through which rural communities obtained the blessings of self-government have been found inadequate to secure them for the growing mass of people known to us as the modern industrial city. The attempt to govern the city simply as a big village, here and there adding an independent commission or board to stop a leak or provide for a new need, has of course led to failure. The so-called

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government of almost every American city is a huge hotch-potch of warring officials and boards. In the city of Chicago, for example, there are some fifteen more or less independent bodies which exercise the power of taxation. The citizens do not have to go anywhere to be taxed. It is the failure of modern democracy to provide adequately for the government of cities that has given rise to most misgiving, and led to the new call upon it to justify its claims.

The failure of popular government in the city is, however, but a symptom of the disorder. Modern liberty and security have made the industrial city a magnet of irresistible power. An endless migration from the country to the city is transforming a rural to an urban population. But the city is closely related to the country. They are but parts of a vast industrial community. Forces which in our time so plainly operate to divert the institutions of popular government from public to private ends in the city, so operate only less plainly in the country. The perversion is only more obvious in the city but not more real. Neither the country nor the city can now live to itself alone. The concern of one is the concern of the other. Both are intensely commercial. They alike depend on an industrial system which has become as wide as the world.

The misgovernment of which we complain is but an incident of modern commercialism. It is commercialism that has developed the marvellous facilities of modern transportation. It is commercialism that has reared our cities. It is commercialism that has captured the machinery of popular government. It is commercialism that has created

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the monopoly corporation. It is commercialism that is diverting the institutions of democracy from the service of all to the service of few. Thus individual liberty, the end sought by modern democracy, is now threatened by the industrial development to which it led.

We shall have to recur to the point of view of the fathers to see how far we have drifted from the intended course. The government which they organized was to derive its powers from the consent of the governed. This consent was to be manifested by something more than mere acquiescence. It contemplated the active participation by the citizens in a government which was to be solely their own and directly controlled by them. Official station, whether high or low, was to be a public trust. Public office was to be an opportunity for service, not a castle to be privately held and enjoyed. All officials were to be merely servants of the people, exercising for limited periods only delegated powers. In a word, the government was to be representative. It was not to be a source but an expression of authority. The people, as an aggregate body, were to be sovereign; all officials, from president to constable, were to be merely their agents.

The founders of the American commonwealth claimed only representative authority. It was "*We, the People of the United States,*" who ordained and established "this Constitution for the United States of America." The resulting government was a self-achievement, a growth from within, not a benefaction from without. It was thus an expression, not a source of authority. This authority was to be exercised by the legislative, executive, and ju-

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dicial departments of the government. These departments held, in the aggregate, all the powers delegated by the sovereign body to its agents.

Reliance was placed in these several departments of government in the order in which they are named in the Constitution. The legislature was mainly relied on to secure the blessings of liberty in perpetuity to all the people. The executive was merely to execute the laws duly enacted, his participation in legislation being merely advisory and negative. The judiciary was to exercise the judicial power and incidentally act as a final negative check on both the legislature and the executive. The long struggle for self-government had been waged against a king. It was by a parliament, which had gradually become more representative, that he had been forced to yield his claims to arbitrary power. It was through the legislature that relief had come from the oppression of the crown. It was inevitable that a people who had but just emerged from such a contest, in seeking to secure the blessings of liberty to themselves and their posterity, should mainly rely on a legislature to be by them chosen at brief intervals. They did not for a moment imagine that representatives selected by themselves for short terms would ever fail faithfully to represent them. Hence, in framing the new government, the legislature was given free rein, while the executive, although elective, was carefully curbed. This, it was assumed, would eliminate arbitrary power, destroy special privilege, and secure a rule in the interest of all. It was not suspected that the members of legislative bodies could ever be representative of special interests, or that it

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was possible they might become irresponsible to public opinion.

Such was the plan of the founders. The legislature, speaking directly and solely for the people, was to make the laws. The executive, aside from the exercise of an influence in legislation, mainly negative, was to execute them. The judiciary was to interpret and apply them and restrain action beyond the limits of delegated authority. The entire government was to be representative. Public opinion was to rule. The people, as individuals, were to obey the laws thus enacted and enforced by their sole authority. How has the practice differed from the plan? The answer is obvious on every hand.

The facts of the situation are too well known to require a full re-statement here. The government of the people has become a government by and for private interests. The representatives of special privilege, driven from palaces and baronial halls, have intervened between the people and their government. The avenues to the public service lead by the lodges of the political bosses. Men worthy to represent the people more and more refuse to pass under the yoke. We have come to a time when our officials no longer lead or even represent public opinion, when there is not a man in public life who can speak with authority to the country on any question of the hour. To realize the change from earlier days, imagine a national commission to suggest financial legislation to Alexander Hamilton or Salmon P. Chase, or an Abraham Lincoln in the midst of war without a policy, but with his ear to the ground striving to detect some stray current of destiny on which to embark.

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This is not all. The agencies of government have not merely ceased to be representative of the people; they have become the willing servants of special interests. A generation after the Civil War passed before legislation was obtained to repair the financial damage which it wrought. Yet, at the behest of special interests, Congress has again and again by law conferred on them the power to tax all to make possible the payment of benevolent wages to some. Indeed, the ability to initiate legislation seems to have all but departed from Congress. Aside from routine work it seldom acts, save in response to pressure from the interested promoters of special legislation. The situation in the States is even worse. The State governments of New York and Pennsylvania are republican only in form. In several States special legislation can be privately arranged for by seeing a single boss. In every State the meeting of the legislature is widely regarded as a public calamity, and its adjournment as a deliverance from present danger. Even worse is the municipal situation. Speaking generally, the public service corporation holds almost undisputed sway. Its paid retainers occupy the council chamber of almost every American city, often sit in the mayor's chair, and make of the city hall a place of merchandise for an odious traffic in public rights for private gain. Membership in most city councils has ceased to be an honor, and even raises a presumption of low if not corrupt character. Happily Chicago has become an exception to this rule.

Mr. John J. Chapman has pointed out in "The Atlantic Monthly" that "misgovernment in the United States

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is an incident in the history of commerce." He holds that "the capture of government by commercialism" is due to "the growth and concentration of capital which the railroad and the telegraph made possible"; that the Civil War left "the machinery of our government in a particularly purchasable state"; that it left the people "party mad," with political power "condensed and packed for delivery"; that, at the moment "when the enthusiasm of the nation had been exhausted in a heroic war, . . . the best intellect of the country was withdrawn from public affairs and devoted to trade"; and that, "during the period of expansion that followed, the industrial forces called in the ablest men of the nation to aid them in getting control of the machinery of government."

The process, silently effected since the Civil War, by which the motive power behind party organization has passed over from principles to money, may now be clearly seen. The extension and consolidation of railroads, the creation and growth of public service and other monopoly corporations, the increase in the value of public grants or franchises, and the vast gains obtainable by combination with exemption from competition, have led to the capture of the agencies of government by commercialism, to a new form of the old struggle between special privilege and equal opportunity.

The fall of the feudal monarchy, to give place to modern democracy, marked a defeat but not the destruction of special privilege. It has never surrendered nor given up the pursuit of its main purpose. Forced from one position after another, in our time it skilfully adapts

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itself to changed conditions, assumes the plain garb of citizenship, seizes the reins of power, creates under forms of law artificial means by which to monopolize industry, destroys equal opportunity, appropriates for a few advantages which belong to all, and proclaims that the result is but a natural product of an inevitable evolution.

The problem of democracy in our day is how to make the government of the people a government by and for them, how to secure for all the blessings which have resulted and shall result from the liberty and security which were its first fruits. To this end the institutions of democracy must again in some way become representative of the people.

It is true, as Mr. Godkin says, that "the democratic world is filled with distrust and dislike of its parliaments, and submits to them only under pressure of stern necessity"; and that "the representative system, after a century of existence, under a very extended suffrage, has failed to satisfy the expectations of its earlier promoters." Whether it will "make way in its turn for the more direct action of the people on the most important questions of government, and a much-diminished demand for all legislation whatever," as Mr. Godkin thinks likely, depends on the success or failure of the present widespread effort to make the agencies of government again responsive to public opinion.

The growing distrust of legislative action has led to a mistake in the remedy. The tendency has been to abandon the legislature, seek temporary refuge in the executive,

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and make the final stand in the courts. Thus, as our legislators have become less representative of public and more of private interests, we have sought relief in an increase of affirmative executive power and a larger use of the negative authority of the courts. The retreat has been marked by various attempts to cripple the legislative authority before leaving it to the control of special interests.

Thus, most legislatures are now permitted to meet regularly but once in two years, the sessions of some are closely limited in time, and the tendency is further to limit their powers. Along with these changes increased powers have been lodged in the executive. The same tendency has marked municipal action. Distrust of the council has led to further limitation of its authority. The powers of the mayor have been steadily increased, and commissions and boards have been multiplied to meet new needs, in preference to restoring the authority of the council.

Acquiescence in the control of our legislative bodies by special interests, however their powers be limited, is a fatal blunder. Nothing short of final authority will long satisfy the forces that have so largely secured control of American legislation. To the extent we retire upon the executive and the courts, we invite them to follow. They have already acquired undue influence in executive chambers, and signs are not wanting of their purpose to add the courts to their possessions. Then, too, to place in the hands of a single executive other than merely administrative powers is to resort to the dictator. It has been truly said that the essence of monarchy is not so much the

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presence of the king as the absence of the people in all the important transactions of government. The remedy for existing ills is not further checks and balances. We already spend too much energy in merely operating the machinery of government. Its agencies must be simplified and made more directly responsive to public opinion. Democracy means government in the interest of all. It cannot surrender control over any of its agents, or permit the intervention of the few between the people and those who exercise their authority. A professed despotism is greatly to be preferred to government by a rapacious oligarchy ruling under the forms of democracy.

We have seen that the evils resulting from the capture of government by commercialism are most obvious in the city. Indeed, in the view of many municipal misrule is the one great failure of democracy in America. The truth is that it is only the most acute and obvious symptom of a general disorder. The rich spoils sought by special privilege are found in greater abundance in the city. That is all. No cure can be complete or adequate that does not reach the seat of the disease. Hence the recovery of representative government must begin in the cities. Unless it succeeds there, the effort will fail. Its success there will be speedily followed by its triumph everywhere. The attempt to reform municipal government by the creation of complex machinery to limit the power of the council has failed. The experience of "Greater New York" is conclusive of this. The truth is that the only effective remedy lies in a direct attack upon the council itself. The line of least resistance lies in the application of the remedy at the

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seat of the disorder. The city council is openly controlled by private interests. It must be made representative of the people. This done, all else will follow.*

*This article was originally written as the opening portion of a larger paper. The article that appears elsewhere in this volume, entitled, "The Municipal Voters' League of Chicago," was the concluding portion of the complete paper.

MUNICIPAL FRANCHISES *

WE are to discuss municipal franchises in their relation to municipal administration. This relation involves some fundamental questions of public policy. It calls for an inquiry into the nature and function of the public service corporation. The writer does not assume to be qualified to speak in this presence of the franchise situation in Boston. He believes what follows to be generally applicable to present conditions in most American cities.

Inquiry into the causes of municipal misrule in America leads straight to the door of the public service corporation. It is always to be remembered that the public service corporation is but a group of private citizens having authority to perform services of a public character. It is an artificial creation of law. The public need, not its members' greed, alone justifies its existence. The multiplication and growth of cities and the increasing demand for public utilities have led to the rapid development of these corporations. They have year by year increased in numbers and acquired new power. They are to-day a public menace in every American city.

The term municipal franchise, as popularly used, may be defined as a grant by a municipality to a public service corporation of a power, license, or permit to engage in an

*An address before The Twentieth Century Club, Boston, October 16, 1901. Published in pamphlet form by The Public Franchise League, Boston, 1902.

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enterprise of a public nature and to use public property or facilities in its prosecution. The enterprise must supply a want of a general, and therefore public, character, or it must require the employment of extraordinary powers and privileges beyond those pertaining to individuals or private corporations. The powers and privileges granted are such as the municipality must itself exercise or delegate to a public service corporation, as distinguished from those private rights and privileges which belong to all.

The tendency has long been towards what is now called the municipalization of public utilities; that is, the public ownership and operation of public enterprises. Nearly, if not quite, all public enterprises of general utility without profit-earning possibilities under existing conditions, together with some having such possibilities, have been assumed and are now conducted by the modern municipality. Indeed, no line can be drawn between municipal and commercial service. There is a clear distinction between public and private enterprises. No such distinction exists between public enterprises conducted by municipalities and those committed to public service corporations. Whether a given public service shall be performed by the municipality or by a corporation is solely a question of public expediency.

It is too late to raise the cry of socialism to deter municipalities from entering more and more into the field of public enterprises. They, however, as a rule still commit to public service corporations those enterprises which require large capital and numerous employees and render special or unequal services to individual users who pay

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rates therefor. Thus transportation, gas, electricity, and the telephone are yet largely committed to these corporations. While the municipality continues unable or unwilling to conduct all public enterprises, it must employ the public service corporation to supplement what it does undertake. It thus remains the function of the public service corporation to conduct such public enterprises as the municipality, for whatever reason, is not yet ready to assume. This, for the present at least, assigns to the public service corporation an important place in municipal administration. It is, therefore, desirable to consider upon what conditions and subject to what public control these corporations may be properly employed by a self-governing people.

It should always be borne in mind that public enterprises, whether conducted by the municipality or by public service corporations, exist for the convenience of the people. Streets are public highways. Nothing should be tolerated in the crowded thoroughfares of a great city that does not contribute to their use by the people. Only the general need of water, light, and transportation can justify the occupation of the streets by pipes and wires and tracks. The sole test of the extent of such occupation is the public need. To use the streets of the people as a means of conferring upon a favored few special privileges, and to make them the base of a private monopoly, is to disregard their public character. To make them a source of corporate gain or even public revenue, save as an incident of their use for the people, is to pervert them from public to private ends. It would

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be as well to permit a private warehouse in a public square as to allow an unnecessary car line in the streets.

The streets of a crowded city should be kept as free from obstructions as possible. The public convenience can alone justify their occupation to any extent by privileged persons or groups having power to levy tolls. Only enough pipes and wires and tracks to supply the wants of the people should be permitted in them. Anything beyond this obstructs the streets, leads to inconvenience, and results in waste. By no possibility can the duplication of the street railway or telephone plant, for example, meet the test of public convenience. Neither can duplication, with its waste of capital and increased expense, permanently result in the best obtainable service at the lowest profitable rates. The waste of duplication is fatal alike to quality and to cheapness.

We at last realize that public enterprises are natural monopolies, or at least that their treatment as monopolies is essential to quality and cheapness of the services which they render. Indeed, this has long been recognized in regard to those public enterprises which are conducted by the public authorities. The national government tolerates no competition with the postal service. Most American cities own and operate public water works free from all competition. Municipalization everywhere substitutes public monopoly for private competition. Municipal ownership means perpetual monopoly, low interest on investment, and exemption from taxation. These tremendous advantages, other things equal, mean better service and lower rates. The public service corporation,

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while employed to render a public service of which quality and cheapness are the tests, should have every element of security which may be safely granted by the municipality. Mr. Allen Ripley Foote even urges, as a business proposition, that the franchise be made "co-extensive with the want to be supplied common to all the citizens; that is, perpetual, all-inclusive, and exclusive." He says that "The franchise should not only be perpetual, all-inclusive, and exclusive; it should be granted untaxed in any way and without charge of any kind; and the property of the corporation, necessarily used in rendering the service, should be untaxed." *

These startling proposals assume that the public service corporation is indeed a public agency, that it is but an instrument of public administration. They are urged in order that public services may be rendered to the people in "the best manner known to the art and at the lowest profitable price." This position is to some extent sound. It would be entirely sound if we might rely on such perfect control of public service corporations as would insure all resulting advantages, beyond a fair return on the private capital employed, to the users in improved services and lower rates, and if all such advantages should accrue to individual users. In view, however, of the inefficiency of our municipal governments, largely due to their corrupting influence, we cannot safely extend the powers and privileges of public service corporations without providing increased means of public control. Nor should individual users of the services which they

* "Municipal Affairs" for June, 1897.

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render receive all the benefits which can be obtained in return for increased elements of security granted to public service corporations. Few public services, if any, are rendered to citizens equally. The streets used by public service corporations are owned in common by all the people. Their use by such corporations to render unequal services to individual users, often at considerable public expense, without some return to the public treasury, is not now regarded favorably.

This brings us to the perplexing question of compensation for municipal grants to public service corporations. What forms shall it take? Shall it be exacted in cash payments to the public treasury, in street improvements and services, in reduced rates to the users, or in all these forms? These are now burning questions. That compensation shall be exacted for municipal franchises is at least generally accepted. There is as yet no consensus of opinion in regard to the form it shall take.

We have seen that the test, whether a given public enterprise shall be prosecuted, is the public need or convenience; that it is not permissible to allow the streets to be obstructed solely or mainly for private gain or even public revenue. It follows that, when it is made to appear that the public convenience requires that a public enterprise be undertaken, the first consideration is good service. This calls for the best obtainable facilities and the necessary investment to secure them. When the public service corporation is employed, there are four distinct interests to be considered. These are: first, the private capital invested; second, the individual user of the service; third,

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the abutting property owner; fourth, the general public. The capital should have security and a fair return for its use. The individual user should have good service at just rates. The abutting property owner should be compensated, by way of street improvements or services, for any special damages suffered by reason of the enterprise. The general public should receive such cash payments as, in addition to other exactions, will leave to the corporation only sufficient income to pay operating expenses, and a fair return on the private capital invested.

There is a sharp controversy, which promises to grow sharper, whether the demand of individual users for the lowest possible rates for services, or that of the general public for a cash revenue from public enterprises, should have the preference. The fact that the enterprise exists primarily to render the service points to a reduction of rates rather than to the payment of revenue by way of compensation. We rely too much on indirect taxation in America. Taxes, to be alike just to rich and poor, should be levied on property rather than on expenditure. To make public enterprises a large source of revenue is to aggravate the gross injustice to the poor of taxing current expenditure rather than accumulated property. The national government does so much by means of indirect taxation to promote inequality of fortune that the evil should not be aggravated by making municipal franchises a large source of public revenue. On the other hand, as we have seen, individual users are not entitled to all the benefits arising from the use of property and facilities owned by the people in common.

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The exaction of compensation should not be made an excuse for over-capitalization. Compensation is the share of the public of an income derived in part from the use of public property and facilities. To exact it in advance by way of a lump sum is as vicious in principle as it would be to anticipate the proceeds of future taxation. Even when desirable to permit a public service corporation in lieu of compensation to erect a costly improvement to be owned by the city, it should not be allowed to capitalize the cost. On the contrary, its cost should be charged to expense. The capital of the public service corporation should not be allowed to exceed the value of its tangible property estimated for the use of a going concern.

We may conclude, in respect to compensation for municipal franchises, that although the primary considerations are quality and cheapness of service, the abutting property owner and the general public are within reasonable limits to be regarded. The rights of all should be protected according to the facts of each case. Full compensation should be exacted for all grants to public service corporations. Its forms should be determined by the local authorities in view of special conditions.

Mere pecuniary considerations, though important, but touch the surface of the question whether the city should continue to license public service corporations to participate for private gain in the transaction of the public business. Good service at just rates can be had with either public or private ownership. Where either the one or the other has failed of these results, the failure was not inherent. The employment of the public service corporation as an

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agency of municipal administration involves much more than the direct results to the service in which it engages. Under the conditions which have long existed and generally still exist, such employment has led to general municipal misrule and widespread moral contagion. A self-governing people can bear financial loss and even inefficient public administration. Such a people cannot afford to arm artificial groups of citizens with authority with which to corrupt the public administration and perpetuate special privilege.

The public service corporation, possessed of franchises of untold value which it has obtained as favors, is a constant menace to public order. It always wants further grants. The greater its success, the more it is subject to attack by real or sham competitors. The larger its revenues, the greater are its means of offence and defence. The extent of its wants and its possessions is the measure of its influence with those who have the power to satisfy and protect them. Its every success adds to its needs and to its power to control municipal administration.

Government by the people is based on the assumption that all who participate in it are equally disinterested and alike devoted to the common welfare. The creation within the body of voters of powerful groups, having special and related interests which conflict with the general welfare, adds greatly to the the difficulties of municipal administration. Yet this is what the uncontrolled public service corporation involves. Speaking generally, American cities are ruled by these corporations. They even own governors and legislators of States. Their paid retainers

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occupy the council chamber of nearly every American city. Their agents often sit in the mayor's chair. They make of almost every city hall a place of merchandise for an odious traffic in public rights for private gain.

The people at the outset gave quite unnecessary odds to special privilege. In their contest with artificial groups of citizens having special interests they are especially hampered by the contract theory of licenses to use public property and facilities. Such licenses are not contracts in any proper sense of the term. They should not be treated as contracts whose obligation may, under no circumstances, be impaired. There is a clear distinction between a contract to furnish materials and labor for the construction of a public building, for example, and an undertaking to conduct a continuing industry, which is an essential part of public administration. The public service corporation can be secured, to the full extent of the cost or value of the facilities which it contributes, without treating its license as an irrevocable contract. By thus treating it, every grant, however obtained, and however prejudicial to public interests, becomes a vested right. No vote by a city council refusing a grant concludes anything. Every vote granting a license to a public service corporation fixes its rights irrevocably for a term of years. Its defeats are but temporary checks; its victories are permanent conquests. Thus, in most American cities, while the refusal of a grant to a corporation settles nothing, every vote of a council majority in its favor, though secured by notorious bribery, creates a "contract," perhaps continuing for generations,

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whose obligation may not be impaired. By this means outrageous public wrongs become invulnerable "vested rights." This is a gross perversion of a constitutional doctrine which should be invoked only to protect real contracts based on adequate consideration. The power of a legislative body to limit the legislative discretion of its successors, *in matters of continuing public administration*, should not be tolerated by a self-governing people. It is quite time to recognize the sharp distinction between vested private rights and revocable public grants.

The people of Massachusetts have not taken kindly to contract grants for fixed terms. The advantages of what is known as the Massachusetts franchise, a revocable grant creating a tenure during good behavior, are admirably stated in the report of the special committee on street railways, appointed under the act of 1897, of which Charles Francis Adams was the chairman. Your experience and that of the District of Columbia are conclusive that it is not necessary to treat franchises as irrevocable contracts in order to secure the investment of capital required by public enterprises. The American people so highly venerate vested rights that they are more likely to protect what Washington Gladden has called "vested wrongs" than to do violence to any legal right or even possible claim of equitable right. In fact, the cry of confiscation and socialism raised by representatives of public service corporations is intended to confuse the issue and discredit those who at last demand proper public control of such corporations.

Permit an outside observer to warn you against the

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term franchise. You have recently under special circumstances made term grants to the West End and the Boston Elevated companies. The way thus opened, the term grant threatens to become chronic here as elsewhere. The recent attempt of the Boston Elevated Railway Company, so neatly exposed by Governor Crane, by means of a term grant for forty years of the proposed Washington street subway, to maintain control of the existing subway for the same period, indicates the possibilities of irrevocable term grants. If the object is to tie the hands of the people in the interest of private greed, nothing better for the purpose than the irrevocable term grant can be devised.

The revocable grant as you have employed it is gravely defective in that it fails to protect the corporation in the event of revocation. The people contribute the streets and the business to the enterprise. The corporation contributes the capital represented by the tangible property employed. Where the grant is, as it should be, exclusive, there is no good will. The right of the corporation to the value of its tangible property should be fully recognized. The public should always be at liberty to "take over" the enterprise, or to deal with a third party. Whenever it does either, it should pay, or cause to be paid, to the existing corporation the then cash value for continuing the enterprise of the tangible property which it has contributed.

The right of the public service corporation to its only contribution to the enterprise thus recognized, it can safely make whatever investment is required. What is of perhaps even greater importance, the public will more freely exercise its legal right of control and even revocation

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when it can do so at any time without palpable injustice. The corporation is entitled to this additional element of security. If conceded, the excuse for irrevocable term grants falls to the ground. The application of this principle to your subway problem is obvious. If the city cannot, or will not, build the subway, let the corporation do so under a revocable grant. Such a grant might provide that, in the event of revocation within a specified time, a *pro rata* part of the cost of the subway shall be returned to the company.

Governor Crane, in his terse and admirable veto of the subway measure, covers the entire ground of public policy. He says:

The surrender of rights which belong to the public, even for a brief term of years, should be permitted only . . . for controlling reasons of public policy. . . . This bill, however, while it does not restrict the company, ties the hands of the community. . . . I am unable to give my assent to a bill which thus restricts the rights of the public, . . . while . . . it insures valuable exclusive privileges to the company in question for so long a period.

These are memorable words. They place a veto of incalculable value to the people on the bed rock of sound principle.

Statutes of limitation are nowhere permitted to run against the people. Their hands should not be tied by any measure which leaves the public service corporation uncontrolled. The character of such corporations, when permitted to participate in the public administration as public agents, should not be overlooked. The commission

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of an agent is revocable. If he makes advances for his principal in the prosecution of his agency he may claim their return. Such a thing as a vested right to conduct a public enterprise — to participate in the public administration — should not be tolerated by a free people. Power to dispense with the services of agents employed, at least at frequent intervals, is an essential condition of popular government. If a public agent is required or permitted to gain an interest by way of private investment in the subject-matter of his agency, that interest should be respected. A government of the people should acquire no right of a citizen by means of confiscation. It is not necessary, however, to confer continuing vested rights in public enterprises in order to protect even private investments therein. Such investments serve a poor excuse for term grants which leave the private right unextinguished and the agent in possession with strong claims for renewals.

It would be as reasonable in principle to elect the president of the United States for a term of forty years as it is to make a grant for a term of forty years to a public service corporation. It would be as reasonable to confer upon the president during his term of office absolute power as it is to invest municipal franchises with the sanctity of private contracts.

The wholesome doctrine of the Supreme Court of the United States, that private property, when invested in a public enterprise, is thereby stamped with a public character, should be applied to all investments of public service corporations. That private citizens should acquire

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continuing vested rights in public property or facilities, or in the public administration, is an intolerable thing.

The uncontrolled public service corporation is everywhere a menace to public order. It ignores and tramples upon public rights, its own rights are constantly imperilled. The pretence of competition has utterly failed to secure good service at first rates. When one company occupies the field, under a permit, to grant a competing franchise is but to arm a highwayman with a bludgeon, a footpad with a "sandbag." Duplication creates a public nuisance and causes reckless waste.

We have recklessly created powerful groups, having adverse special interests, within the whole body of voters. We have turned these artificial creations loose to prey upon the people, practically without let or hindrance. We have left their regulation and control to a competition which was impossible or easily neutralized. We have given them the motive to corrupt public administration, and placed within their grasp the means to that end. The public service corporation unrestrained corrupts the public administration, causes incalculable pecuniary loss, and spreads a general contagion due to the lowering of moral standards and the multiplication of tainted private fortunes.

The remedy for evils everywhere so obvious and so generally acknowledged is to be sought in the efficient control of the public service corporation. If this fails — and it must be conceded it may fail — public ownership and operation are inevitable. The public service corporation cannot be permitted to continue unrestrained, if ours is to

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remain a government of uniform laws of and for a people possessing equal rights. Those interested in its continued participation in the public administration should meet the people half way in devising means for its effective control. Concessions should be made on both sides. The people should abandon competition as a pretended means of control, and grant to each public service corporation the monopoly of its field. This will save the waste of duplication and double operation and destroy the vocation of the "sandbagger." They should concede the right of the corporation to just compensation for its tangible property at the termination of its franchise, whether by lapse of time or revocation. These concessions made by the people, the corporations, as agents engaged in the public service, should submit to a strict public control. This control should provide for publicity of accounts, for the expiration of all term grants to a single company at the same time, for the application of the merit system to employees, and for full compensation for all franchises in such forms as the people may desire. Protect the corporation from highwaymen, and it can render good service at the lowest possible rates. Admit its right to the value of its tangible property whenever it shall not be permitted to continue, and it may safely accept either short or revocable grants, and at all times make needed extensions and improvements. Eliminate the contract theory as applied to franchises, and refuse all grants without full compensation, and the motive for bribery disappears. Remove the possibility of excessive profits, and the desire to render inadequate service and to evade

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proper regulation vanishes. Place the employees of public service corporations under the merit system, and the secret partnership of such corporations and political bosses will cease.

All these are practicable measures. Until they have been tried, it is idle to say that the public service corporation cannot be controlled. If coupled with the referendum for all grants of franchises on demand of a reasonable percentage of the voters within a time fixed by general law, they would take the public service corporations out of "politics." Such a consummation would clear the way for the recovery of representative government.

Those interested in the continued employment of the public service corporation will do well to respond with some alacrity to the rising demand for its control. Of one thing they may be assured: existing conditions have become intolerable. The public service corporation will not be permitted much longer to block all efforts for municipal reform. It must submit to proper public control, or it must go. It must be controlled, or it will be destroyed.

If a strenuous attempt to control these corporations is the first step from present intolerable conditions, it is by no means the last resort of the people. If it fails—and it is by no means certain to succeed—the municipalization of public necessities will proceed with increasing rapidity to the early exclusion of private participation in the public administration. If we cannot secure decent municipal government while the public service corporation occupies our streets, it needs no prophet to predict its early demise.

It is widely feared and urged that public owner-

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ship and operation is impossible as a practicable remedy because of the large additions it would bring to the resources of the spoilsmen. It is idle to deny that this is a grave objection. However, it is but the truth to say that the spoilsmen cling to their odious traffic in order to intrench themselves in places of power that they may there serve and sandbag public service corporations. Remove these suppliants for and receivers of special privileges at the hands of those who for the time exercise the public authority, and with them will disappear forever the chief motive of the spoilsmen. As the merit system gains ground, depriving them of patronage, they more and more name the employees of public service corporations. Some of you would be startled if informed of the extent to which the service of these corporations has passed into the hands of your councilmen and party bosses. The continuance of the public service corporation will require, as a feature of its control, some adaptation of the merit system to its places of employment. A large increase in the public service is subject to grave objections; but even this is a less evil than a great corporate service whose entrances are guarded by public officials and party bosses. The domain of the spoils system now embraces these corporations. The reform of the public service will not suffice. The reform movement must extend to these powerful corporations if they are to continue to be the recipients of municipal franchises.

The struggle for that public order which results from just government is everywhere and always against special privilege. Democracy aspires to secure government under

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which legalized special privilege shall yield to equal opportunity before the law. A municipal franchise can have no cash value unless it confers some special privilege upon the grantee. Whatever of value pertains to the right to use public property or facilities belongs to the people. Gifts of the people's rights can be obtained of those chosen to represent them only by improper means. The cash value of the stock and securities issued by a public service corporation, in excess of its tangible property, measures the extent of the special privilege it enjoys. This excess is what it has filched from the people.

Read in the October "Atlantic" the article entitled "The Piracy of Public Franchises." Therein Mr. Bowker summarizes the amazing processes by which the surface-road and lighting companies of Manhattan Island have transformed actual investments believed to be well within \$125,000,000, representing tangible properties which might now be duplicated probably for less than \$100,000,000, into "vested rights" represented by bonds and stocks now quoted in the market at \$400,000,000. But you need not go so far for illustrations. You have had experience of somewhat similar transformations. Estimate the difference between the cost of duplicating the plants of your public service corporations and the present selling price of their outstanding bonds and stocks, and you will have an accurate measure of the inefficiency of your State and municipal governments. The difference between the value of the tangible properties of your public service corporations and the selling price of their out-

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standing securities measures the extent to which piracy of municipal franchises has proceeded in historic Boston.

The time is ripe for franchise reform. With improved conditions and a serious attempt to assume proper public control, it will be for those who own its securities to determine whether the public service corporation shall have a new lease of life. The people will not much longer tolerate present evils. They will in time demand that the responsible managers of these corporations shall neither be, nor deserve to be, in the penitentiary; that those who derive dividends from their securities shall be able to plead not guilty to a charge of receiving stolen goods. Above all, they will insist that the public administration shall cease to represent special interests, that it shall be indeed the public administration.

MUNICIPAL SELF-GOVERNMENT: THE COUNCIL AND MAYOR *

MUNICIPAL government in the United States is undemocratic. The city is the agent of the State. The people of the State arbitrarily govern the city. The mosaic which we call municipal government is the means by which the people of the State exercise arbitrary power over minor communities in matters purely local. The exercise of such power by indirect and complex means, has resulted in bad municipal government. That it would so result was inevitable.

Democratic government is an expression, not a source, of authority. The people governed is the source of its powers. The government of the United States derives its powers from the people of the United States. The government of the State derives its powers from the people of the State. The government of the city should obtain its powers from the people of the city.

Our National and State governments were created by the people to serve them in different spheres. Neither derives authority from, nor acts as the agent of, the other. Both derive authority directly from the people,—that of the Nation from the people of the Nation, that of the State from the people of the State. The line between Nation and State is clearly drawn. The government of the Nation is confined to those matters which concern the entire people

* Reprinted from "The Atlantic Monthly," March, 1902.

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of the Nation. The line between State and city should be as distinctly drawn. The government of the State should be confined to those matters which concern the entire people of the State. Thus the government of the city would be left free to deal with those matters which concern only the people of the city.

The supreme authority in our system is the people of the United States. They, as an aggregate sovereign, by means of the Constitution, created a national government, with certain well-defined general powers. Incidentally and to guard the exercise of the powers thus conferred, they imposed limitations on the States. By the Tenth Amendment they reserved to the States and to themselves the powers not delegated to the national government. The State has appropriated to itself these reserve powers. It should have left to the people those of local concern, to be by them conferred on the city. This would have carried out the democratic scheme of government devised by the fathers, and by them in part applied.

The work of the founders of the American commonwealth in framing our State and National governments has been much and justly admired. Theirs was indeed a splendid achievement of constructive statesmanship. That they omitted to add a simple and democratic plan of municipal government is doubtless due to the fact that large cities did not then exist. What have become the public necessities of city life were unknown. Such municipal administration as was required was simple and without important bearing on the larger matters of State and National government. Hence, in framing

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their scheme of government, the fathers of American democracy overlooked what is now the vast and widening field of municipal activities.

This omission in the organization of democratic government in America has never been remedied. As municipalities grew, the rapidly multiplying wants of urban populations were met by haphazard makeshifts. Institutions by means of which rural communities and small villages had realized local self-government were retained, and extended to meet needs for which they were not devised and are not adapted. As the strain increased, the State added numerous officials, boards, and commissions.

Thus the government of every American city has become a huge conglomerate of warring officials and boards representing the State. Elective officers and elections have been so multiplied that it is a difficult task merely to keep the offices filled. What we call municipal government is too complex to be understood save by experts. The people, always busy with their own affairs, have more and more left the entire matter to the tender mercies of the political bosses and franchise grabbers. In this way municipal administration has been diverted from public to private ends.

The State, in attempting to govern the city, has unduly emphasized the executive view of municipal administration. Indeed, to the extent that city government is an agency to express the will of the State, its function is only executive. The power to legislate is the distinguishing mark of self-government. The mere right of the people of the city to choose between rival aspir-

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ants to local executive office, under State authority, involves only the power to determine whether State laws shall be strictly or loosely enforced. To be really self-governing, the people of the city must enjoy the right to create a body having power to legislate for them in all matters of local concern.

The policy which makes the city the agent of the State has led to anomalous results. In Nation and State the legislature is the affirmative power. It speaks directly for the people. It expresses their will in continuing laws of general application. Its function is to determine public policies. The executive and the judiciary merely participate in the enforcement of the laws. They deal with individual matters as they arise. Their function is to administer. In a city, which exists mainly to enforce State legislation, these conditions are reversed. The play is an exotic. The mayor is the star performer. The council plays but a minor part. The mayor, when chosen, assumes to his constituency the role of temporary dictator. As a representative of the State, he is subject to its legislative authority. Nominally an officer of the city, he is beyond the control of its people.

The council of a city, which exists as a creature of the State, is at best an unnecessary, and at worst a contemptible thing. The mayor and his cabinet might perform its part; indeed, the tendency is to confer upon the mayor powers taken from the council. In most American cities it is thought that bad municipal government is directly chargeable to the council. To escape

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evils lightly assumed to pertain to the council, the mayor is given increased authority. The council, thus deprived of most of the poor powers which it once possessed, is left a derelict on the troubled sea of municipal misgovernment.

The evils which result from undemocratic municipal government extend far beyond the city. The legislature of the State, if empowered to deal with none but matters of general application, might be a responsible and efficient body. Charged as it is with the power, even duty, constantly to intermeddle in the affairs of every municipality in matters purely local, its sessions have become log-rolling bees. Local measures clog its calendar. Each member seeks to press such of these as affect his locality. A gang of members from a single city, acting as the chattels of public service corporations, often coerce their fellows into action prejudicial to the public welfare. A measure which sacrifices the rights of the people of but a single community can rarely be expected to arouse to effective opposition the people of a great State. The good of the locality, often of many localities, is sacrificed that the public business itself may proceed.

Thus the undemocratic attempt by the people of the State arbitrarily to govern the city results in making the government of both city and State irresponsible, inefficient, corrupt. Indeed, means better calculated to divert the powers of government from public to private ends could not be devised. No man or group of men can be trusted to exercise irresponsible power. The government of the city by the State violates the principle

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of self-government. It endangers the State in the vain effort to save the city. It relieves the people of the city of local responsibility. It corrupts and paralyzes both State and city administration.

The proposal to make the city as independent of the State as the State is independent of the Nation does not involve the loss of proper State authority within the city. The Nation exercises an authority within the State which extends even to its individual citizens. The State must continue to legislate generally for all its people in respect to such matters of common concern as crime, personal rights, the family, education, property, corporations, commerce, elections, and general taxation. These great duties are obscured, often imperilled, by continuous strife at the State capital over conflicting local interests.

The legislation of the State touching civic affairs will continue to be enforced in the city mainly by local officials. Indeed, the execution of State laws in each of its communities by officers locally chosen is what made the State, despite undue centralization of legislative power, the chief conservator of local self-government. It is of much greater importance to preserve this time-honored practice intact than it is to have all State laws well and uniformly enforced. The vital objections which lie to a State constabulary lie equally to the absorption by the State of those legislative powers which can be locally exercised.

What powers may be locally exercised? In brief, all powers that do not concern the entire people of the Nation or of the State. Among these are the power to frame a

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city government and define its authority, the police power so far as local, the power of taxation for local purposes including schools, the power to establish and administer streets and parks, the power to supply public necessities directly or by means of the public service corporation, and the power to establish and administer reformatory and charitable institutions. It is objected that the people of the city cannot safely exercise such powers; that they are incapable of self-government. It is urged that the government of the State must stand guard over the people of the city; that it must save them from themselves. The answer is obvious. The government of the State is not a storehouse of saving grace. It is at best but an expression of the will of the entire people of the State. It is too often the means by which incorporated greed uses the public authority for private ends. It is impossible for the entire people of a State to know the needs of its several local communities as well as their own people know them.

The people of the nation permit the people of the State to determine for themselves nearly all matters of State government. The people of the State may with like propriety permit the people of the city to determine for themselves practically all matters of city government. This by no means implies that the exercise of this permissive local authority shall be free from proper constitutional and statutory limitations. Municipal government may be made to conform to a general State policy without taking from each municipality liberty largely to determine for itself the limits and the means of its activities. The State,

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for example, should, by definite law, protect the right of all its citizens freely to compete for public employment. It should establish laws of uniform application, providing especially for such matters of common interest as popular education, the preservation of health, and the regulation of the liquor traffic. It may provide broad restrictions touching some matters of common interest, leaving the city free to add to them if its people so desire. It may prohibit city interference in matters of vital general concern. It is for the people of the State, in framing its constitution, to determine what matters shall be under State control without local interference, what matters shall be left to the city subject to certain restrictions, and what matters shall be under city control without State interference.

The city must act through agents. In this it is like the State. It need not rely on the State for protection from its agents. Restraints may be imposed on constituted authority as well by city charter as by State constitution. The people of the city should be permitted, under proper general limitations, to frame a city constitution or charter. They should be free to determine all questions of municipal public policy. They should possess power to legislate as well as power to administer. They should enjoy legislative as well as administrative freedom.

We at last realize that neither in State nor in city is it necessary to confer final authority on public servants. It is now clear that there should be ratification, express or implied, by the people, of the more important acts of their representatives. There are great possibilities in the growing desire of intelligent citizens to participate more

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directly than heretofore in legislation. The people may in time both choose and direct their agents. They may also reserve power to pass on all important legislative acts on petition of a certain percentage of the voters within a fixed time. That by such means the agents of the people may be made responsive to their will is believed by increasing numbers. Private principals often reserve the power to reject or ratify the acts of their agents. There are even weightier reasons why the people should reserve the power to reject or ratify the acts of public servants. It is not necessary to confer upon them unlimited power.

The local independence here advocated is required fully to carry out and make symmetrical our scheme of government. When this measure of local independence is secured, ours will really be a government by the people. The city must be governed by the people of the city, if it is to be an instrument of democratic government. The State must surrender arbitrary power, if it is to be merely an agency of a self-governing people. If government by the people is desirable, it should alike obtain in Nation, State, and city.

This course would leave each of the three distinct governmental agencies of the people free to perform its functions without interference by the others. It would make each directly responsible to its special constituency. It would confer upon each practically exclusive control of a few great matters of common interest to its people. Nothing so conduces to make a representative government efficient as to limit its jurisdiction to a few important matters of common interest to those for whom it speaks.

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Efficiency rapidly decreases with the multiplication of the subjects with which a representative government deals.

Our government, to mere casual observers, seems complex in form and difficult to understand. Our national government is, in fact, simple. It deals only with those great concerns of general interest to the people of the United States. Our State governments would be equally simple if each were confined to the important matters which concern its entire people. To the attempt of the States to combine both general and local functions is due the apparently inextricable confusion which has so long characterized our State and municipal governments. Give to State and city separate and distinct powers; make each directly responsible to its special constituency; permit neither to exercise other than direct representative authority: the result will be simple, responsible, efficient government.

The State, to the extent that it has exercised arbitrary power over its cities, has ceased to be democratic. The result might have been foreseen. No despotism is so unrestrained as the despotism of a crowd. It may be safely asserted that nowhere else is municipal government so irresponsible as it is in the United States. When our National, State, and city governments shall severally and directly represent their respective constituencies, when none of them shall exercise other than representative powers, we may claim that ours is in fact as well as in name a democratic republic.

The extent to which the city is made the agent of the State differs greatly in the several States. In certain

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States, the legislature, by special acts, governs each city separately, even in matters of petty detail. In other States the attempt is made to limit legislation to acts general in form and applicable to all cities of a given class. In Pennsylvania, it seems that the legislature, whenever the administration of any city becomes unsatisfactory to the State boss, may by special act remove its mayor, authorize the governor to name his successor, and directly despoil its public service. The city of New York has long been governed by the legislature of the State. Its people are merely permitted, from time to time, to determine whether its officials shall be common criminals, party tools, or public servants. These officials, when chosen, are subject, in the discharge of their duties, to constant intermeddling by the legislature. Some of them are responsible to the governor, and may be by him removed. To-day, a city of three and a half millions, whose people participate in the government of the nation, is not even permitted to determine for itself during what hours its saloons shall be closed. In Illinois, although the constitutional prohibition of special legislation is frequently evaded, the city of Chicago is greatly hampered in matters merely local, for want of permissive power to govern itself. All State interference in matters purely local, whatever its extent, is pernicious. Emancipation of the city from State intermeddling is everywhere a crying need.

Municipal government, if it is to act for the people of the city rather than as an executive agent of the State, must possess full legislative as well as large executive powers. The more independent of the State it becomes,

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the greater will be its legislative powers. A representative government must legislate as well as execute. Hence municipal self-government calls for a powerful council. This means public rather than secret, democratic rather than despotic city government. The vice of American municipal government lies in that it is mainly executive, and that it acts for the State. When it becomes representative of the people of the city, the council will voice and the mayor will execute their will. We shall then have responsible municipal government.

Much might be said in support of the proposal to make the mayor the administrative agent of the council. In many European cities he is chosen by the council, and thus acts. It is the American method to separate legislative and executive functions. Legislators and executives, elected by the people, directly and severally represent them. This division of powers among direct representatives of the people, justified by experience in nation and State, should be applied in the city. We understand and know how to work a government having distinct legislative and administrative departments. We know how to apportion responsibility between legislature and executive. The application of this method to the city will complete and make symmetrical our system of government.

Thus it appears that a municipal government directly representative of and responsible to the people of the city, and having distinct legislative and administrative departments, will strictly comply with American ideals, however it may depart from recent American practice. It is undeniable that it will not accord with such practice,

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especially that of recent years. The council, never what it should be, has been gradually abandoned, its powers being assumed by the State legislature. This usurper of arbitrary authority has made the mayor its local representative, vesting in him both executive and legislative powers. The distinction between legislation and administration in municipal government is all but lost. In lieu of municipal self-government we have despotic rule. In the absence of means through which its people might govern the city, the tendency has been to rely on the goodness and wisdom of the mayor. The resort has been to the dictator. Yet with this growth of despotism in our cities American municipal government has become more and more a "problem."

There are those who hold that good municipal government cannot be expected of democracy. Some even say that our experience is conclusive of its failure in this field. However, as thus far we have not tried really democratic methods in city administration, our failures cannot be laid at the door of democracy. We have made full trial of municipal government by State legislature and autocratic mayor acting together. To this irresponsible combination our failures are chargeable. The remedy for evils thus produced does not lie in a further departure from democratic methods. The failures of the Constitution are due to the unwillingness of the fathers to rely on the people to choose the president and the members of the senate. The irresistible tendency of our history has been to remove all barriers between the people and their government, to make all its agencies directly responsive to their will.

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This movement will finally compel the application of democratic methods to city administration. Its aim to make the American commonwealth a representative democracy is certain of accomplishment.

Government, with us, has but one possible source of authority. Having repudiated the absurd fiction of the divine right of a man or group of men to rule over others, we can draw no line of exclusion. Authority to govern must come from without or it inheres in the whole people. We have nowhere save in the people any reserve of authority or virtue upon which to draw. To say that the people of the city cannot be trusted to govern themselves is to admit once for all the failure of democracy. The people of the city form a rapidly increasing proportion of our population. If not fit to govern themselves, they are not fit to participate in the government of the State and Nation. We are committed to democracy, and must work through it, however long the way, to good government.

No one who is at all acquainted with history and with the vast interests of our complex modern life expects government of whatever form to become an easy task. Those who really believe in democracy do not shrink from the application of democratic methods to city administration because of the difficulties involved. That their faith in the people of the city, even when largely of foreign birth, is not misplaced, a single illustration indicates. The council of the city of Chicago, though unwisely hampered by the State, possesses large powers. In 1895 it was absolutely owned by special interests. To-day the people of Chicago are represented in its council by over

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fifty of its seventy members. It is organized on non-partisan lines, the best members being in control of all important committees. No important measure to which there was popular objection has passed since the reform movement began. The Chicago council is to-day one of the best legislative bodies in the entire country. This result has been attained without waiting for organic reform.

The present hopeful movement for municipal reform takes democracy for granted. It for the first time seeks to apply democratic methods to city administration. It demands municipal self-government, with council and mayor. In the words of Mr. Delos F. Wilcox, in advocacy of the excellent municipal programme recommended by the National Municipal League, "The hope of humanity seems to lie in the perfection of democracy rather than in any retrogressive step, in exalting rather than in lessening popular responsibility."

MUNICIPAL SELF-GOVERNMENT *

THE work of the framers of the Constitution of the United States has been much and justly admired. They created a national government to represent and act for the people of the United States in the great matters of national concern. They left the people of the States free to govern themselves in all matters not of immediate national interest. The Nation and the State became the direct agents of the people; the one, of the people of the United States; the other, of the people of the State. Their respective spheres of action are distinct. The national government speaks for the entire people; the State governments speak for the people of the respective States. Each represents directly its own people and is independent of the others.

This division of authority among representative agencies of a free people has been amply justified by its success. That it should have been carried a step further is now clear. In their scheme of government the founders made no adequate provision for the government of cities. This omission has not been supplied by their successors.

The city as we know it, with its vast population and complex life, was unknown until our time. Such cities as existed in the United States a hundred years ago differed little from country villages in their requirements.

* An address before the Twentieth Century Club of Boston, Mass., January 22, 1904.

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Means then fairly adequate gradually became wholly inadequate for their government. To-day our greatest city, having a population larger than that of the first thirteen States at the adoption of the Constitution, does not know from any experience the meaning of municipal self-government.

The fundamental defect in American municipal government is that it is undemocratic. The city is but an agency of the State. It acts for the people of the State, not for the people of the city. True, the people of the city are permitted to choose certain so-called municipal officers; but these in fact exercise locally the authority of the State. The city is without other than delegated authority. Its people may not collect or expend their own money for their necessary community wants without permission of the State. Every American city is in fact a State asylum, and its people wards of the State. Our great municipal populations have thus far acquiesced to be thus held in leading strings, because so accustomed. But signs of revolt are not wanting; and declarations of municipal independence may soon be expected in many of our cities.

The government of the city should express the will of its people as the government of the State expresses the will of its people. The people of the city should ordain its charter as the people of the State ordain its Constitution. The city and the State should be as distinct as the State and the Nation are distinct from each other.

Representative government succeeds best when it deals with but a few subjects and those of concern to all for whom it acts. The government of the United States has

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succeeded, largely because its jurisdiction is limited to a few great subjects of national concern. Our State governments have become more and more inefficient because charged with the control of many matters merely local and of constantly increasing importance. Public officers cannot be expected to protect interests in which their constituents have no interest. Only representatives of those affected should act for others. Thus only can proper accountability be secured. The doctrine of no taxation without representation implies that no governmental action should be taken except by representatives of those to be affected.

The increasing volume of local legislation tends to paralyze and corrupt all State legislation. Matters only of local interest lead inevitably and directly to log-rolling. No government which acts on many matters of purely local concern, in which its constituency has no direct interest, can long remain either honest or efficient.

It would be presumptuous in me to attempt to discuss your local conditions. However, it may give point to these generalizations to call your attention to some hasty gleanings of mine from the "Acts and Resolves" of the last two sessions of the general court of Massachusetts. Surely a stranger might expect to find in these attractively printed volumes weighty measures of general concern to all the people of this venerable commonwealth. In lieu of many such measures, he finds them nearly filled from cover to cover with special acts to control in minute details the local affairs of the various cities of the State. It appears from the constitution of the commonwealth

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that the general court has "full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof."

It is well known that your general court solemnly determines each year what is good for the people of Boston; in short, that the annual meeting of the general court is a sort of special providence to the city. I find from the "Acts and Resolves" of that august body that at its session of 1902, it graciously permitted the city of Boston to "widen Hyde Park avenue to a width not exceeding eighty-five feet": also to do the things (whatever they were) agreed upon between the city and the Boston Terminal Company in respect "to the construction of the Cove street bridge, so-called"; also to settle with abutting property owners for damages resulting from widening Franklin street; also to sell its bonds "to the Trustees of the Public School Teachers' Retirement Fund"; also "to place Andrew C. Scott upon the pension roll of the fire department"; also to issue and sell its bonds in certain amounts within the following four years for funds to be used in constructing and furnishing normal and other new school buildings; also to bear the whole expense of the construction and maintenance of sewers in the city designed for the disposal of surface drainage; also to assess private property for special benefits resulting to it from public improvements completed within six years; also to

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"make regulations relative to the exercise of the trade of bootblackening by minors"; also to construct "a system of tunnels and subways so designed as to be adapted for the accommodation" of both elevated and surface cars under certain "public streets, squares, or places"; also, by fifteen distinct acts, the city is authorized to pay various sums of money to the widows or other relatives of as many deceased employees and officials.

The general court, at the same session, directly provided that "The officers in attendance at the municipal court of the city of Boston for the transaction of criminal business shall, while on duty in said court, wear uniforms to be designated by the justices of said court, and for such uniforms shall be allowed and paid by the county of Suffolk the sum of one hundred dollars each annually in addition to their salaries as such officers." It also by direct provisions of law discontinued a part of B street in Boston; and authorized the metropolitan water and sewerage boards to provide means for measuring the water supplied to each of the cities and towns in the district, and directed said board to report to the next general court the quantity of water supplied to each of said cities and towns and whether water is being used therein unnecessarily or improperly.

The general court, at its session of 1903, graciously authorized the school committee of the city of Boston to make additional appropriations of funds of the people of the city for the support of their public schools; also directed the treasurer of Boston to issue its bonds to obtain funds for the construction of a tunnel or tunnels to East

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Boston; also authorized the construction of sewerage work in Boston by its superintendent of streets, or by such other officer as the mayor shall designate; also authorized the city of Boston to sell to the town of Brookline the Old Boston Reservoir property on Boylston street; also extended the pension system of the police department of the city of Boston; also authorized a bridge across Chelsea street; also authorized the city of Boston to improve various specified streets and to provide the means therefor; also to acquire certain flats and lands covered by tide water in Dorchester, for sanitary purposes; also provided for the election of thirteen aldermen on a general ticket in a way apparently intended to insure the control of the board by political bosses, if you have them; also directing the harbor and land commissioners to dredge the channel off the easterly shore of Dorchester "to a depth not exceeding twelve feet at mean low water"; also authorized the city, by eighteen distinct acts, to pay sums of money to the widows or other relatives of deceased employees and officials.

Such are some of the measures of the last two years which illustrate the deep concern of the people of Massachusetts for your welfare. It must be nice to feel that whatever happens the people of this great commonwealth have you in their keeping; that they will restrain you from making an excessive outlay of your own money on the education of your children; that not even a back street of your city may be improved at your own expense without their anxious care; that they are keeping careful watch to see that you make no improper or unnecessary use of the

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water for which you pay; that they will see that work on your sewers is performed by the proper officers; that they will come to the relief of your political bosses when their power is endangered; that twenty times a year they will rush in to restrain you from impoverishing yourselves through sympathy for the widows and orphans of deceased policemen and firemen; that they will advise you of the exact psychological moment in which you may build a bridge over Chelsea creek; and that they will not permit you to seal the bottom of the channel off Dorchester.

Seriously, my friends, the Acts and Resolves, a few of which I have summarized, illustrate what is still done as a matter of course by all our States, differing only in degree. Such measures rightly conceived reflect on the sanity, to say nothing of the capacity for self-government, of the inhabitants of American cities. People fit to govern themselves will not long tolerate this monstrous usurpation of their rightful authority.

The people of Boston by the best of warrants possess the right to participate in the government of their country. Yet they are not permitted to tax themselves for the public education of their children or for the improvement of their streets without the gracious permission of the member from Cranberry Centre.

The time will come when the people of Boston will dare to govern themselves. They will claim and acquire their right of municipal self-government. The soil on which Boston stands was early dedicated to freedom. Within the limits of your city some of the greatest victories of liberty have been won. Where so much has been

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achieved, surely what remains to achieve will be undertaken. The very stones in your streets protest against government from without.

The country is wont to look to Massachusetts for leadership in every movement for reform. We expect Boston to assume its rightful place in the effort now gathering to make municipal government throughout the United States democratic. Until this be fairly tried, no one may say that democracy has failed in the government of cities.

THE NATION

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THE Union, its preservation and perfection, has been the leading issue in American politics. It has made the greatest demands upon statesmanship and sounded the loudest calls to arms. On its account the contests of a century have been fought; in its name the victories of a century have been won. The Articles of Confederation declared the Union perpetual; the Constitution was framed to make it more perfect; the war for the Union was fought to make, in the phrase of Chief Justice Chase, an "indissoluble Union of indestructible States."

If we seek the real cause of the great controversy that lies between the perpetual Union of the Articles of Confederation and the indissoluble Union of 1865, we shall find it in the widely differing opinions that have obtained as to the location of American sovereignty. While important phases of this controversy have been settled, the question of final authority, the actual basis of all American law, still remains a fruitful source of misunderstanding of our institutions both at home and abroad.

Among the definite views that have prevailed as to the location of American sovereignty, two have been of special influence. It has been earnestly contended on the one hand that sovereignty is held by the States, and on the other that it is held by the aggregate people of the United

* Reprinted from "The Northwestern Law Review," Chicago, October, 1895.

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States, or by the aggregate people of the several States in union. On one side it has been claimed that the colonies by the Revolution became severally free, sovereign and independent States; that these States could not surrender nor transfer their sovereignty, and that the Constitution was but a mere compact between sovereign States. On the other side it has been held that the colonies were never independent, sovereign States; that as one people subject to Great Britain they achieved their independence and became a sovereign people, and as such established the Constitution. Thus the question whether the United States constitute a single sovereign State, or a Confederacy of Sovereign States, is made, by the supporters of these views, to depend upon the historical inquiry whether the American people achieved their independence as one people or as several independent peoples. Hence more attention has been given to the history of a century ago, from which some support is easily found for either view, than to the actual facts and conditions of the more perfect Union of the Constitution. In this connection undue attention has likewise been given to the *intent* of the framers of the Constitution. Some of these intended one thing and some another. Their intent is only of value as it accords with what they in fact did.

The actual location of American sovereignty is a fact of to-day, not a question of history, nor a creature of intention. What the framers of the Constitution did is of vastly greater consequence than the antecedent location of American sovereignty, or their intention as to its location.

The supporters of both these positions, although they

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differ widely as to its location, agree that sovereignty is indivisible, and that it must exist somewhere in unity in every independent political community. One or the other of these views has been held by most of those who have intelligently sought to locate the final authority in our complex system. But there have always been those who have held that sovereignty is divided between the States and the United States. These have not understood the nature of sovereignty, or have mistaken its agents for their principal. They have freely used the word "sovereign," with apparent indifference as to its meaning, and have filled our judicial and political literature with an absurd jargon about divided sovereignty, and the Federal and State governments being each sovereign within its sphere. A divided sovereignty is a flat contradiction of terms, and can no more exist than a divided man can live.

In John Austin's celebrated analysis of law, the first step is the proposition that a law is a *command* issued by a superior to a subject and enforced by a sanction or penalty. Positive law is distinguished from other laws, properly so-called, as the command of the sovereign of an independent political community. A sovereign is a person, or a determinate body of persons, to whom the bulk of the community is habitually obedient; such person, or determinate body of persons, not being in the habit of obedience to any determinate human superior. This definition is at once so clear and scientific that it has been accepted as adequate by many if not most of those who have since had occasion to consider the meaning of the term. A sovereign cannot be limited in the exercise of

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sovereign powers, nor can such powers be shared between it and another. Such limitation or division would imply a superior with authority to impose such limitations or divide such powers. Hence as Austin remarks, "Sovereignty, or supreme power, is incapable of legal limitation, whether it reside in an individual or in a number of individuals." It follows that there can be but one sovereign, or sovereign body, in an independent political society at one and the same time, and that such sovereign, or sovereign body, can be subject to no human superior. Sovereignty is always held in unity by one person, or a determinate body of persons. Its powers may be distributed in exercise, but must remain one in possession. It may create or adopt agencies through which to exercise its powers, but it must remain free from the fetters of positive law. With this meaning of the term in view we may seek the location of American sovereignty.

The power that created and adopted our various agencies of government; that delegated and "reserved" to them the sovereign powers which they wield; that defined those powers and restricted their exercise by a written Constitution; that from time to time has added further expressions of its will, and that may at its pleasure resume the powers thus placed in the hands of its agents and redistribute them, is sovereign in this country. This sovereign employs agents through which to exercise many of its powers. Of these one of the most important is the local State, which is not itself sovereign. All its powers were "reserved" or delegated to it by a power outside of and greater than itself, by whose authority alone it acts. It

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is not even a mere agency of its aggregate people, or of the aggregate of those who hold the franchise. In fact such aggregate body in the local State is not sovereign, but is itself another agency of a superior. There is no power granted or "reserved" to the local State or its aggregate people that may not be withdrawn or limited, not only without its consent, but against its will. Even if we assume that the Constitution can only be amended in the manner therein provided, a given State exercises no power of which it may not be deprived by the action of three-fourths of the other States against its own will and the wishes of all the citizens. A State which exercises no power of which it may not thus be deprived, is in no proper sense sovereign or independent. The powers which it exercises may be sovereign, but they belong to a superior in relation to which it is dependent.

But if the location of American sovereignty is not to be found in the local State, nor in its aggregate people, neither is it to be found in the Federal government, which is itself an agency of limited though important powers. The Federal government did not make the Constitution, but is itself the creature of the Constitution. It can neither add to nor change its powers. As to important matters, such as the protection of life, liberty, and property, it cannot even exercise powers of sovereignty. The fact that it is a government of limited powers is conclusive of any claim of sovereignty on its behalf. Sovereignty cannot be divided, and have its powers limited by written constitutions or otherwise. Its powers cannot be divided in possession, but may be distributed among agents

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through which they are exercised. But such agents are in no sense sovereign. The Federal government is without authority to say how many or how few shall be its powers, or what shall be delegated or reserved to the States. It is a child of the Constitution, a mere agency of the sovereign. Over and above the local State, its aggregate people, the Federal government, and the Constitution, stands a sovereign power higher than any of them, superior to all of them. This power holds American sovereignty in unity, having distributed its powers among its agents through which it exercises them. No one of these agents has any final control, even as to what shall be its own powers; and even when some of them act together in amending the Constitution, they thus act in obedience to, and under the authority of, the sovereign that stands over and above the Constitution itself.

The powers of sovereignty being distributed in this country among many agents, there must be some body politic, or aggregate people, able at all times to recall and redistribute them. Such body or people is alone sovereign. It is above the Constitution and all its complex agencies. The only body that meets these requirements is the aggregate people, composed of all who hold the franchise in the several States. This aggregate is one body politic. As such it is subject to no human superior, although its individual members constitute a large part of its subjects, and as individuals, are habitually subject to its will. It is not, as a body politic, bound by the Constitution, but is itself the power whose command alone gives the Constitution authority. The members of this body are often loosely

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called sovereigns, and it is sometimes said that every American citizen is a king. This is error. Only the aggregate body is sovereign, while its members as individuals are subjects who are alike bound to obedience with those who do not hold the franchise.

It is, however, objected that there is no such aggregate ruling class which, holding sovereignty in unity, stands above all our constitutions, laws, and governmental agencies. Professor Bliss, in his work on sovereignty, goes so far as to say that, "The distribution of powers between the Federal and State governments is permanent." He claims that the Constitution cannot be changed by the Federal state, the Federal people, the local States or their several or aggregate peoples; that it requires the consent of both the local and Federal States, and that the powers of sovereignty are not distributed but permanently divided. He says that such powers may be said to be distributed without division when there still exists a State or people which may recall, continue, or redistribute them at will. He admits that if sovereignty remains it must be held in unity, but asserts that it has been destroyed by the division of its powers among our various agencies of government. Mr. Bliss argues that the aggregate people acting as one body politic are not sovereign, because they cannot make constitutional changes or control the distribution of powers. In other words, the power that made the Constitution, in making it gave up its own life. The sovereign has in making the Constitution committed suicide. The future welfare and government of the Nation is remitted to the care of irresponsible agents whose master

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has gone to a far country never to return. The main error in this reasoning lies in the assumption that the sovereign is absolutely bound by the Constitution, and that it can only be amended in the manner therein provided.

The maxim, "The king can do no wrong," is easily understood as applied to an absolute monarch. It simply means that such a sovereign can do no legal wrong. All law represents his will, and he cannot be bound by his own will. Any act contrary to a former expression of his will must be regarded merely as indicating a further expression of the will of the supreme authority. The same reasoning applies when sovereignty is held by an aggregate body instead of a single individual. The sovereign body can do no legal wrong. It is not itself bound by the laws it sets for its agents and subjects. Hence provisions contained in the Constitution for its amendment cannot be regarded as binding upon the aggregate body in which resides American sovereignty. Such provisions are binding upon the agents through which amendments may be made. Such agents have no authority to amend except as directed. The sovereign body itself, being above the Constitution, may amend it in any manner it chooses. Its power and right to amend, whenever and in whatever manner it may desire, is in no way affected by the fact that it is highly impracticable for it to amend except through the agencies and in the manner provided in the Constitution itself. In fact the provisions for amendment are to be regarded, not as law binding the sovereign, but as an expression of its purpose to amend only in that manner; as notice to its subjects, public offi-

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cers and other agents, that they are not to regard anything purporting to be a further expression of its will as such unless expressed in the mode stated. If, however, the sovereign should amend by a clear and unmistakable expression of its will in any other manner, the duty of obedience would at once rest upon all its agents and subjects. While the Constitution remains without further amendment, it is to be regarded as still expressing the sovereign's will, and when amendments are made through the regularly constituted agencies they must be assumed to be a further expression of that will.

It is also objected that the aggregate people of the several States do not in fact act together as a single body politic. It is true that in establishing the Constitution they did not gather in one place and take united action. It is also true that they have not since met and formally resolved that the Constitution and the various agencies of government still represent the will of the entire body. It is likewise true that in all their action respect has been paid to the local States. But the Constitution was not made by the States or for the States. It was "We the people of the United States," not the several States or the peoples of the several States, who ordained and established the Constitution. Local independence had never been known. The Colonies though locally isolated were subject to a common authority, and independence was achieved by the joint action of all under a common government. The Constitution was established for the better protection of the one people of the United States.

Many who have never accepted the doctrine of the Cal-

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houn school as to the rights of the States have fallen into the error that the States are sovereign within their sphere. It still seems to be held by these that the States as independent political communities established the Constitution, reserving to themselves sovereignty each over its own territory, except as limited by that instrument. The States were retained as important agencies of government by the Constitution, but the fact that their powers are general, except as limited, does not indicate that they are anything but agents. They did not reserve to themselves the powers not delegated to the United States by the Constitution, nor prohibited by it to the States. The reservation of the Tenth Amendment is to them, or to the people, by the power that made the Constitution, and continued them as its agents. The States exercise sovereign powers, but such powers are delegated to, or reserved for them.

In making their own constitutions and local laws the aggregate people of a State, composed of those who hold the franchise, resemble in some things the aggregate people of the United States. Such body is not legally bound by the State constitution and laws. It may amend its constitution in any manner it chooses, without reference to the mode prescribed in the instrument itself. The vital distinction between the aggregate people of the United States and the aggregate people of the local State lies in the fact that the former owes obedience to no human superior, while the latter is bound by the Constitution of the United States. The aggregate people of the United States is sovereign; the aggregate people of the local State is merely an agent exercising great but delegated powers.

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The individuals who compose both aggregates owe obedience to the laws imposed by both, and, as we have seen, are as individuals in no sense sovereign.

It is claimed by some writers of high standing that sovereignty is impersonal. Guizot discards the idea that sovereignty, which he describes as the primitive, absolute right of law making, can exist in any person or in the State itself. He asserts that reason, justice, the divine law within should dictate human laws. Francis Lieber regards sovereignty as a power inherent in society, in the State itself. Others unite in these views, holding that sovereignty is impersonal, inherent in society, but not held by those having the franchise or otherwise.

It seems that in this view the aggregate of those holding the franchise is to be regarded as still another and higher agent of the sovereign authority. The objection to this theory lies in its removal of sovereignty beyond the range of definite legal initiative. Where positive law exists there must be some definite final authority by which it is imposed and enforced. Hence the sovereign person, or determinate body of persons, of Austin's definition. But those who hold that sovereignty is impersonal, deny that law is a command. Thus Mr. James C. Carter, in his address at the meeting of the American Bar Association of 1890, on "The Ideal and the Actual in Law," says: "The law is not a body of commands imposed upon society from without, either by an individual sovereign or superior, or by a sovereign body constituted by representatives of society itself. It exists at all times as one of the elements of society springing directly from habit and cus-

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tom. It is therefore the unconscious creation of society, or in other words, a growth. . . . The statute law is the fruit of the conscious exercise of the power of society, while the unwritten and customary law is the product of its unconscious effort."

Mr. Carter also says that law springs from and rests upon "the habits, customs, and thoughts of a people, and that from these a standard of justice is derived by which doubtful cases are determined. The office of the judge is not to make it, but to find it, and when it is found, to affix to it his official mark by which it becomes more certainly known and authenticated. The office of the legislator . . . is somewhat, but not fundamentally, different."

Others who share these views, in substance, also insist that the sovereign person, or determinate body, of Austin's definition, is further limited by public opinion. In general, they insist that what has been regarded as sovereignty is itself controlled by limitations imposed by the habits, customs, passions, and public opinion of all the people, and by reason, justice, and divine law. That all these have great influence upon the action of the person, or determinate body, that holds sovereignty in unity in any given society, may be at once admitted. It is not claimed that this sovereign person, or body, is at all free from limitations other than those imposed by positive law. No one of the influences named is legal. Nothing that any one of them dictates can be enforced by legal sanctions if the sovereign person, or body, chooses to disregard it. No rule of action supported by any of them can be

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come a rule of positive law until it has taken the form of a command, directly or indirectly. Where the sovereign is a single person, individual opinion or caprice is likely more or less to influence his action. But where the sovereign is a body composed of numerous members of the society, as in this country, the habits, customs, and public opinion of the entire people will generally exert great influence upon its action. It may even be admitted that its action should as a rule be determined by these influences. As long as it retains the right of choice and is not subject to the legal control of a superior, it matters not whence come the individual opinions of members which find expression in their joint action. Such opinions must be formed by some influences, and it is natural and proper that the habits, customs, and public opinion prevalent in the society of which they are the leading members should have great or even decisive weight in their formation. The distinction is, that such influences are not legal, and do not become part of the law of the land until they have assumed, directly or indirectly, the form of a command of the sovereign body. The making of the habits, customs, and public opinion of the people into law proceeds so silently and constantly that it may often seem difficult to mark this distinction, but it must always exist, or the courts would be obliged to enforce the entire body of habits, customs and public opinion of the people. Even if they did this, it would be in obedience to a command to do so, which would be of itself a command making all such habits, customs, and public opinion the law of the land. The courts themselves are mere agents of the sovereign body; and as said by

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Hamilton, they "have neither force nor will, but only judgment."

Mr. Carter alleges that it is the office of the judge not to make, but to find, the law and affix to it his official mark by which it becomes more certainly known and authenticated. It would be more accurate to say that the sovereign person, or body, creates the judicial office and appoints judges to find out and declare, in deciding new and uncertain cases, what shall be the law. Law thus made is as much the command of the sovereign as is that made by legislation. Both are declared by its agents. The law which both declare becomes such only by virtue of the authority of a determinate sovereign.

The long controversy touching the location of American sovereignty has raised questions both difficult and dangerous. The danger is past, but it still remains important that we clearly understand where lies the final authority for all American positive law.

AT THE PARTING OF THE WAYS: A STUDY IN INTERNATIONAL POLICY *

THE administration of Washington, both by example and precept, committed the United States to a foreign policy which served us well for a century. This policy is best expressed in the memorable language of the Farewell Address:

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. . . . 'T is our true policy to steer clear of permanent alliances with any portion of the foreign world. . . . Harmony, liberal intercourse with all nations are recommended by policy, humanity, and interest.

Again:

The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little *political* connection as possible.

Perhaps our "detached and distant situation" and the demands made upon us by the rapid settlement of a continent, rather than our sense of justice, led us so long to follow in the main the example and counsel of Washington. However this may be, the pursuit of this policy has not isolated us from the great world, nor interfered with our just influence in its affairs. On the contrary, because of our situation and disinterestedness, we have had a leading part in the development of international law and the larger influences that make for the peace and progress of the world.

* Read before The Chicago Literary Club, January 20, 1896.

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The Civil War finally settled the vital question of union, and removed the remaining obstacles to the rapid development of the forces that constitute national strength. It also tested our institutions as they were never tested before, and revealed a strength in our national government which had not been suspected. The close of civil strife left the country under too great obligations to the party under whose leadership and in whose name the splendid victory for national unity had been won, to permit an early return to normal political action. Then, too, it has taken time to remove the *débris* of the conflict and adjust the nation to its new conditions. In the interval, a new generation, claiming no personal share in the achievements of the past, has arisen to find its opportunity in the larger national life which opens before us. In view of the changes thus wrought, the evidently growing desire among us that the United States shall exercise a more potent influence in the affairs of the world, is not matter of surprise. This desire has found expression within the last few years in a series of incidents in connection with our relations with foreign powers, which seem to indicate that our foreign policy is in process of transformation. We may well question any substantial change from the policy which has so long served us, upon the whole, so well. A study of these incidents and their tendency, therefore, becomes a patriotic duty.

The controversy between the United States and Great Britain in regard to sealing in Behring Sea is still fresh in public memory. It was no doubt desirable to make some provision for the protection of the seals, but the course of our government to reach this result was most

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extraordinary. We began by claiming jurisdiction over a great arm of the Pacific Ocean as a closed sea. We had, with England, denied this right of sovereignty when claimed by Russia, but based our claim to exercise it as derived from Russia. This claim of sovereignty over the high seas was contrary to the law of nations as finally established largely through our influence, notably in our contentions with Great Britain in respect to the Canadian fisheries. Yet, in the face of the law and our own record, we captured many British ships and warned away others, for sealing many miles from land in Behring Sea. When our claim of sovereignty over hundreds of miles of the high seas was shown to be untenable, we produced the novel claim that we had a property in the seals. This claim we sought to sustain by a ridiculous analogy based on the annual resort of the seals to the Pribyloff Islands for breeding purposes. As well might the owner of a marsh claim property wherever found in the wild ducks hatched in his bushes. All our substantial contentions were overruled in the arbitration, one of our arbitrators, Mr. Justice Harlan of the Supreme Court, very properly voting with the majority to sustain the law against his own government.

The Barrundia incident belongs to this series. Barrundia, an embezzler and former minister of war for Guatemala, took refuge in Mexico, and was ordered out of the country for breach of neutrality. He took passage on the Pacific Mail steamer *Acapulco* for Salvador. The vessel touched at Guatemalan ports, arriving at San José, August 27, 1890. An attempted arrest was objected to by the captain of the steamer. Then our minister, Mr. Mizner,

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secured a promise from the authorities of a fair trial and no death penalty. Commander Reiter of one of our naval vessels was asked by the captain of the *Acapulco* to protect his passenger. This request was declined for want of authority to interfere with the jurisdiction of the local authorities. Our minister took the same position. Barundia resisted arrest, firing at the officers, and was shot. Soon after, his daughter shot at Mr. Mizner in the legation, charging him with her father's death. Both minister and commander acted strictly within the rules of international law. The commander also acted in accordance with the printed instructions of the navy department to commanders of our war vessels, governing their conduct when in foreign waters. Yet the minister was recalled, and the commander reprimanded and removed from his command for not protecting the passenger of a merchant vessel from arrest by local officers in the waters of a foreign nation. The secretary of the navy even reprimanded the commander for not seeking out the passenger and offering him asylum on his ship, though such action would have been in direct violation of the rules of international law.

The history of our relations with Chile during the grave crisis through which that progressive country passed between 1889 and 1892, is important in this connection. In 1889 we sent as American minister to Chile Mr. Patrick Egan, a foreign adventurer who had but recently arrived as a fugitive from his own country. He formed a close personal alliance with Balmaceda and became his closest diplomatic friend. Afterwards his son received a railroad contract from Balmaceda's government. Both Egan and

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the American consul were warm supporters of the dictator's cause during the civil war between him and the congressional party. The consul, at least, speculated heavily in foreign exchange, which fluctuated greatly during the war. It became necessary for the congressionalists to secure ammunition and arms. For this purpose they sent the *Itata* to San Diego. The Chilean minister at Washington applied to Secretary Blaine to detain the vessel. The secretary by letter pointed out that we had no authority under the rules of international law to detain the vessel or interfere with her purpose. Mr. Blaine then went to Bar Harbor, and the president took personal charge of the matter. A deputy United States marshal was placed on board the ship to detain her on suspicion. Thereupon she sailed, putting the officer off at the entrance to the harbor. A pursuit by one of our new cruisers followed, which was entirely novel to international law. No nation in time of peace has jurisdiction over ships of other countries, unless suspected of piracy, on the high seas. No capture was made, but the congressionalists surrendered the *Itata*, in order not to offend the United States, and the vessel was brought back to San Diego, where she lay several months, until finally, after the war was over, dismissed by our own admiralty court, on the ground that her detention was unlawful. After some delay caused by this incident the congressionalists, who controlled the Chilean navy, obtained arms and ammunition in Europe, and on August 20, 1891, landed a force of about eight thousand men at Quinteros, an inlet twenty miles north of Valparaiso. The United States cruiser *San*

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Francisco sailed up the coast and observed the landing, returning at five o'clock the same afternoon. Our consul immediately went on board, and upon his landing it became publicly known how many troops had been landed at Quinteros. Balmaceda's organ the next morning, the day of the decisive battle, under the heading, "A Battle at Hand," announced the situation, commencing in these words:

From trustworthy news brought by the United States warship *San Francisco* yesterday, we know for a certainty that the revolutionists have disembarked, from their twelve transports and six war vessels, about eight thousand men in the vicinity of Coneon and Quinteros.

The triumphant congressionalists found among Balmaceda's effects, after their victory, and published, a telegram from one of his officials to the dictator, dated at 9:36 a. m. of the day of the battle as follows:

MR. PRESIDENT: The American admiral has left me only this moment, and he believes, as I do, that a reëmbarkation is not possible.

These publications led to the belief among Chileans that Admiral Brown had grossly violated neutrality to act as a *spy* for Balmaceda at a critical moment in the contest. This, following the *Itata* incident, and the subsequent exasperating course of our minister in granting excessive asylum to the vanquished in the American legation, aroused the most intense popular feeling against the United States and our representatives.

Under these circumstances, and about three weeks after the battle, Commander Schley of the United States ship

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Baltimore, against the advice of our consul, gave one hundred and seventeen sailors shore leave. They went into the worst portion of the city of Valparaiso, visited the saloons, and finally two were killed and others injured by a mob. The Chilean government promptly arrested some of the mob, and began a legal inquiry into the matter, which finally resulted in light sentences for some of the suspects. Pending the investigation by the Chilean authorities at Valparaiso, the *Baltimore* sailed to San Francisco, where an *ex parte* inquiry into the matter was made by the judge advocate of our navy. The evidence taken by him showed that before the beginning of the riot the American seamen had visited several saloons, but were reported to have been "*perfectly sober*," and that the first blow was struck by an American seaman.

Nothing is clearer in international law than that sailors ashore in a foreign port are subject to the local jurisdiction, and that their wrongs are to be redressed by the local authorities, subject to the right of their government to demand a money indemnity in proper cases. In this they do not differ from other foreigners. It is not a question of clothes or uniforms. Neither our sailors nor our private citizens are required to visit foreign capitals, especially in times of local revolution and excitement; but if they do, they subject themselves to the local jurisdiction; and we are bound by the findings of local courts, if regularly reached by due process of law. In the New Orleans case, a few months before the deplorable riot in Valparaiso, our government refused the right of Italy to question the action of the local authorities, although no one was pun-

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ished for the wanton butchery of Italian subjects while in jail. Mr. Blaine answered as follows a demand of the Italian foreign officer that the guilty parties should be brought to justice: "The President is unable to see how any government could justly give an assurance of this character in advance of a trial and verdict of guilty." Yet the same President, without awaiting the result of the Chilean inquiry, upon an *ex parte* hearing of our own, thousands of miles from the scene of the riot, declared not only the participants but the Chilean government and people guilty of intentional insult to the United States. The Chilean government at different times after the riot referred to it in the diplomatic correspondence as a "*deplorable occurrence*," a "*lamentable affair*," which the government "*deeply deplored*"; and as "*an occurrence which Chile has lamented and does deeply lament*." On January 8, 1892, the new Chilean minister wrote to Mr. Blaine:

I have also received special instructions to state to the government of the United States that the government of Chile has felt very sincere regret for the unfortunate events which occurred in Valparaiso on the sixteenth of October.

The President of the United States, refusing to accept the findings of the Chilean courts, and having himself indicted, tried, and convicted the entire Chilean nation of intentional insult to the United States, refused to accept these apologies as sufficient, and on January 21, 1892, issued his "*ultimatum*" demanding a more abject apology, quite properly suggesting a form to be used, as the Chilean officials had so far failed to hit upon the precise form of

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words which he regarded as suitable. The Chilean government received this extraordinary demand on January 28d. Because of the absence of the President from the capital the Chilean foreign office asked two days within which to reply. On Monday morning, January 25, our State Department received from Chile an apology so abject that the chairman of our house committee on foreign affairs expressed his "*pity that a people who seemed to be animated by such generous sentiments should be placed in the position of making so humble an apology.*" Yet, after the receipt by the State Department of this communication, and before the translation of the cipher, the President of the United States at noon of the same day sent a special message to Congress in which he reviewed the findings of the Chilean court, overruling them, renewed his charges against the Chilean government and nation, stated his demands for a further apology and for indemnity, and urged that these demands be vigorously enforced.

There is probably nothing in our diplomatic history so deserving of the censure of mankind as this treatment by us of a brave and progressive people while engaged in a life and death struggle to preserve their liberties. Think of the position in which we placed the new government of Chile, while yet overwhelmed with the difficulties of domestic reorganization. What we deserved and gained by this bit of aggressive foreign policy is the bitter hatred of at least a generation of Chileans, and the distrust of all the Spanish-American republics, whose friendship, not whose fear, it is our privilege and interest, and should be our policy, to cultivate.

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The relations of the United States to the Hawaiian revolution of 1892, are better known to the public, though the facts are still, in some particulars, subject of dispute. For our purpose here it is sufficient briefly to recall the undisputed facts. As early as March, 1892, our minister wrote to the Secretary of State: "*I desire to know how far the present minister and naval commander may deviate from established international rules and precedents in the contingencies indicated.*" It is plain that he at least knew in advance of the proposed revolution, and was fully prepared to land the American forces and recognize the revolutionary government at the moment it was announced. This was immediately followed by a hasty attempt at Washington, by a retiring administration, to rush through annexation without adequate consideration. The alleged grounds of the change of government in Hawaii were purely domestic, and of no concern to the United States; and our eager participation in, if not active encouragement of, the revolution, and our hasty action in the matter of annexation, cannot be justified on any grounds consistent with the duty of a great nation to a weak and friendly power. The action of the present administration in withdrawing the hasty treaty from the senate; its investigation and condemnation of the acts of our representatives in Hawaii at the time of the revolution, its peaceable attempt to restore the *status quo*, and its withdrawal of our forces from the islands and removal of our flag from the government buildings at Honolulu, are too familiar to require more particular reference.

This series of recent incidents in connection with our

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foreign relations was followed on December 17, 1895, by the President's extraordinary and unexpected message in regard to the long-standing boundary dispute between Great Britain and Venezuela. The disputed territory is of interest and concern to the United States, if at all, only because of an extensive grant of part of it made in April, 1895, by Venezuela to certain wealthy American citizens. The controversy in respect to the boundary in question dates back to 1814, the claims of both parties, in the language of Secretary Olney, being "*of a somewhat indefinite nature.*" Mr. Olney also in his despatch of July 20, 1895, says that "Neither of the parties is to-day standing for the boundary line predicated upon strict legal right—Great Britain having formulated no such claim at all, while Venezuela insists upon the Essequibo line only as a liberal concession to her antagonist." And again: "It is not admitted, however, and therefore cannot be assumed, that Great Britain is in fact usurping dominion over Venezuelan territory. While Venezuela charges such usurpation, Great Britain denies it, and the United States, until the merits are authoritatively ascertained, can take sides with neither. But while this is so—while the United States may not, under existing circumstances at least, take upon itself to say which of the two parties is right and which wrong—it is certainly within its right to demand that the truth shall be ascertained." Mr. Olney, therefore, demanded arbitration, and insisted upon a definite decision "whether Great Britain will consent or will decline to submit the Venezuelan boundary question in its entirety to impartial arbitration." His despatch

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significantly referred to "the measures necessary or proper for the vindication" of the policy of the United States "to be determined by another branch of the government," and that an adverse decision will be a result "calculated to greatly embarrass the future relations between this country and Great Britain."

Lord Salisbury, under date of November 26, 1895, answered Secretary Olney's despatch, referring to the boundary dispute as a "*controversy with which the United States have no apparent practical concern.*" He says that Her Majesty's government "are not prepared to admit that the interests of the United States are necessarily concerned in every frontier dispute which may arise between any two of the States who possess dominion in the Western Hemisphere; and still less can they accept the doctrine that the United States are entitled to claim that the process of arbitration shall be applied to any demand for the surrender of territory which one of those States may make against another." And again he says:

Although the negotiations in 1890, 1891, and 1898, did not lead to any result, Her Majesty's government have not abandoned the hope that they may be resumed with better success, and that when the internal politics of Venezuela are settled on a more durable basis than has lately appeared to be the case, her government may be enabled to adopt a more moderate and conciliatory course in regard to this question than that of their predecessors. Her Majesty's government are sincerely desirous of being on friendly relations with Venezuela, and certainly have no design to seize territory that properly belongs to her, or forcibly to extend sovereignty over any portion of her population.

They have, on the contrary, repeatedly expressed their

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readiness to submit to arbitration the conflicting claims of Great Britain and Venezuela to large tracts of territory which from their auriferous nature are known to be of almost untold value. But they cannot consent to entertain, or to submit to the arbitration of another power or of foreign jurists, however eminent, claims based on the extravagant pretensions of Spanish officials in the last century, and involving the transfer of large numbers of British subjects, who have for many years enjoyed the settled rule of a British colony, to a nation of different race and language, whose political system is subject to frequent disturbance, and whose institutions as yet too often afford very inadequate protection to life and property.

The President responded by his message to Congress of December 17, 1895. In this he states that our government proposed arbitration "*without any conviction as to the final merits of the dispute, but anxious to learn in a satisfactory and conclusive manner whether Great Britain sought, under a claim of boundary, to extend her possessions on this continent without right, or whether she merely sought possession of territory fairly included within her lines of ownership.*" As both the President and Secretary Olney expressly disavow holding "*any conviction as to the final merits of the dispute,*" the former proposed a commission to determine "*the true divisional line between the republic of Venezuela and British Guiana.*"

The message, like Mr. Olney's despatch, concludes with an ominous threat of war. Referring to the report of the proposed commission, the President says:

When such report is made and accepted it will, in my opinion, be the duty of the United States to resist, by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any

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lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.

In making these recommendations I am fully alive to the responsibility incurred, and keenly realize all the consequences that may follow. I am nevertheless firm in my conviction, that, while it is a grievous thing to contemplate the two great English-speaking peoples of the world as being otherwise than friendly competitors in the onward march of civilization, and strenuous and worthy rivals in all the arts of peace, there is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor beneath which are shielded and defended a people's safety and greatness.

These ominous words, the hasty and unanimous action of Congress, and the savage yell of approval of a sensational press, startled the world, seriously affected the exchanges and business relations of two continents, and rendered the peaceful settlement of what was in itself a petty controversy exceedingly difficult. The commission has been appointed and is now striving to find out for us whether for more than eighty years Great Britain, under claim of a boundary dispute in the wilds of South America, has threatened, in the disquieting language of Mr. Olney and the President, our "*safety, security, and welfare*," "*the integrity of our free institutions*," and "*the tranquil maintenance of our distinctive form of government*"; and especially whether during all these years, as the President now fears, our "*safety and greatness*" have been deprived of the *shield and defence* of "*national self-respect and honor*" through the terrible calamity of "a

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supine submission to wrong and injustice" in the form of settled English rule over territory which under the South American system is of right entitled to at least one revolution a year. The real question submitted to the commission is not, what are the rights of the parties to the boundary controversy. Both the President and the Secretary of State disclaim "*any conviction as to the final merits of the dispute,*" or knowledge whether Great Britain "*is in fact usurping dominion over Venezuelan territory.*" The real inquiry is whether during all these eighty years the very "*safety*" and "*integrity*" of "*our free institutions*" have been unconsciously imperiled by a "*supine submission to wrong and injustice*" in far-away Venezuela.

This would have been very grotesque if produced in the form of comic opera. Presented as it was, accompanied by an appeal to the evil passions of two continents, with a dark background of war, world-wide calamity, and uncounted hosts of dead and wounded, and untold numbers of widows and orphans, it suddenly broke upon the world as one of the most terrible of modern possibilities. Before this awful picture civilization stood aghast, wondering whether its boasted progress is but a mere veneer.

These and some minor incidents constitute thus far the tangible results of what is known as *an aggressive, or vigorous, foreign policy*. It is already evident that this policy is one of such possibilities that other, and perhaps, even more startling results may appear at any time. Thus far it means, as illustrated by these incidents, the courting, not avoiding, of foreign entanglements. It also proposes

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an indefinite extension, regardless of means and international law, of our jurisdiction over this continent and such islands as we may choose to include. Each of the incidents above recounted discloses a tendency to disregard established restraints and international usages, and to substitute might for right. This course is widely held to be justified, and even required, by what is known as the Monroe Doctrine.

The so-called Monroe Doctrine, until recently, was simply a defensive policy. It was not even a departure from the pacific foreign policy inaugurated by Washington. At the conclusion of the Napoleonic wars the emperors of Russia and Austria and the king of Prussia organized the "Holy Alliance" to conserve and maintain absolutism in Europe and over all lands claimed by European nations. France afterwards joined the movement. The object stated in the Treaty of Paris of September 26, 1815, creating the alliance, was that the "three allied princes, looking upon themselves as merely delegated by providence to govern three branches of one family" should, "both in the administration of their respective States, and in their political relations with every other government, take for their sole guide the precepts of that holy religion; namely, the precepts of justice, Christian charity and peace," and that they should "lend one another, on every occasion and in every place, assistance, aid and support." This precious combination within a few years held several conferences, suppressed popular movements in Italy and Spain, and issued circulars denouncing "revolt and crime" and "any pretended reform effected by

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revolt and open force," and declaring that European powers "had an undoubted right to take a hostile attitude in regard to those States in which the overthrow of the government might operate as an example." They finally agreed by secret treaty "to put an end to the system of representative governments" in Europe, and to destroy the liberty of the press. In the Summer of 1823 the Alliance notified the British government of a proposed congress with a view to the termination of the revolutionary governments in Spanish America. These governments had been acknowledged by the United States, and the merchants of both Great Britain and the United States had built up a large trade with them. Canning, the English foreign minister, suggested to our minister at London a joint declaration against intervention by the allies. The matter was carefully considered by the cabinet, and Madison and Jefferson were consulted. It was believed by some, that it was the intention of the Alliance to partition the Spanish-American territory, Russia taking California, Peru, and Chile; and France, Mexico; and that the Alliance had an ultimate design upon our territory and the suppression of free institutions in America. The view of Mr. Adams, that we should form no entangling alliance with England, but that each American government should make its own declaration, prevailed. The English minister, therefore, advised the French ambassador that England would remain neutral in any war between Spain and her revolted colonies, but take such action as her interests required, in case of the "junction" of any other foreign power with Spain against them. Our part in preventing

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the proposed intervention by the Alliance was the well-known declaration by President Monroe in his message of December 8, 1823. He refers to the different "political system" of the "allied powers," and declared that "*we owe it . . . to candor and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.*"

These declarations of hostility by both the United States and Great Britain led the allied powers to abandon their purposes in respect to this continent, and Great Britain soon after recognized the independence of the Spanish-American republics.

In connection with the Panama congress in 1826, President Adams in his message to the senate says: "An agreement between all the parties represented at the meeting that *each will guard by its own means* against the establishment of any future European colony within its borders may be found advisable." And again: "Should it be deemed advisable to contract any conventional engagement on this topic, our views would extend no further than to a mutual pledge of the parties to the compact to maintain the principle in its own territory." The house passed resolutions defining our foreign policy to be to preserve "peace, commerce and friendship with all nations and form entangling alliances with none: and declaring against any convention or joint declaration with the Spanish-American republics for the purpose of preventing the interference of any of the European powers with their

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independence or form of government," and "*that the people of the United States should be left free to act in any crises in such a manner as their feelings of friendship, and as their own honor and policy may at the time dictate.*"

Thus we see how carefully the Monroe Doctrine, or policy, was limited when first declared. It was asserted solely for purposes of defence; and, while it was desired that the Spanish-American republics should assert and maintain the same policy, each as to its own territory, care was taken to form no entangling alliances even with them to declare or enforce it, that we may remain free to act in a given crisis as our own honor and policy may at the time dictate.

The very proper and effective enforcement of this doctrine in causing Napoleon to withdraw the French troops from Mexico at the close of our Civil War, admirably illustrates its proper place in our foreign policy. In our own serious boundary disputes with Great Britain, involving vast interests on our northeast and northwest boundaries, it was not dreamed to have any application whatever. We have again and again since the announcement of this policy witnessed bombardments and seizures of the ports of the South and Central American States by England, France, and Spain, to enforce claims for indemnity and other purposes, without even a suggestion that this involved any interest of our own.

The Holy Alliance long since passed away, and constitutional government prevails to-day in the capitals where its treaties were made. The Monroe Doctrine will never again have to be asserted against European absolu-

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tism. That doctrine served us well when first announced, and later in the Mexican case, and may serve us well again. Its use, however, as the basis of an aggressive foreign policy is not only entirely novel, but directly contrary to its original purpose. We may, therefore, conclude that the acts which thus far constitute the aggressive foreign policy upon which we seem to have entered, are neither supported nor required by the policy known as the Monroe Doctrine. It also seems clear that these acts are not within the traditional foreign policy established by Washington and pursued by the United States for a hundred years. We are in fact at the *parting of the ways*, and should now decide upon our future course.

It may be frankly conceded that a policy which was wise in Washington's day and long thereafter, may not be so now, and that it is sometimes desirable to reëxamine a policy, however venerable and authoritative, to determine whether it still meets the requirements of a developing national life. The real question is not whether the acts above recounted are within the policy laid down by Washington, or in accord with the Monroe Doctrine; but whether they are wise and in line with what should now be the foreign policy of the United States. This is a question of self-interest, having due regard to our obligations to other nations. Our government is formed to "*establish justice, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.*" Its duty lies entirely within what tends to conserve these purposes. The presumption seems irresistible that we shall still, as in Washington's day, best

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promote justice and the general welfare by cultivating "peace and harmony with all" nations, and by "*diffusing and diversifying by gentle means the streams of commerce, but forcing nothing.*" We have long since reached the time which he foresaw, "when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; *when we may choose peace or war as our interest guided by our justice shall counsel. Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground?*"

The Monroe Doctrine, as we have seen, was announced as a defensive policy. It was a declaration for a specific purpose and aimed to meet an existing and imminent danger, and was both timely and effective. When Mr. Seward enforced the same policy in Mexico he made no claim that it was a doctrine, or rule of international law, or that our peace and safety were in any way involved. He did not even mention the name of President Monroe, but only urged the principle which "the United States hold in relation to all other nations," that "they have neither a right nor any disposition to intervene by force in the internal affairs of Mexico, whether to maintain a republican, or even despotic, government there, or to overthrow an imperial or a foreign one, *if Mexico shall choose to establish it or accept it*"; and he finally insisted upon the withdrawal of the French troops solely upon the ground

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that we would not permit the establishment of a foreign government in Mexico against the will of the Mexican people. The time had then long since passed when our "safety" could be seriously involved by anything that might occur elsewhere on this continent. Yet now, having brought out the Monroe Doctrine as a support for an aggressive foreign policy, we have fallen back on the theory of *danger* to our "*peace and safety*" as a justification for interference in every petty dispute that arises between European States and the South and Central American Republics. Thus Mr. Olney says that "*the safety and welfare of the United States are so concerned with the maintenance of the independence of every American State as against any European power, as to justify and require the interposition of the United States whenever that independence is endangered*": and that we cannot permit "*our only real rivals in peace, as well as enemies in war*" to be "*located at our very doors.*"

Even in 1848 Mr. Calhoun, who it will be remembered was of the cabinet of President Monroe, in a speech in respect to the then proposed occupation of Yucatan, refers to the "*absurdity of asserting that the attempt of any European State to extend its system of government to this continent, the smallest, as well as the greatest, would endanger the peace and safety of our country.*"

Mr. Cleveland, while insisting that our peace and safety are involved, seems to find that our greatest danger in the Venezuelan boundary dispute lies in "*a supine submission to wrong and injustice*" of which we have been uncertain, if not unconscious, for more than eighty years. Surely

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such dangers cannot be regarded as imminent. They are trivial in comparison with the grave domestic dangers which an aggressive foreign policy is causing us to neglect. Anyway, if, as the President admits, "any adjustment of the boundary which Venezuela may deem for her advantage and may enter into of her own free will cannot, of course, be objected to by the United States," is it not time to abandon as a survival the idea that our "peace and safety" are involved? The fact no doubt is that the President, finding the theory of danger to our peace and safety incorporated in the Monroe Doctrine, as an orthodox Presbyterian did not feel authorized to disregard it. This is of course a necessary disadvantage of accepting President Monroe's statements of a good policy for a specific purpose, as an inspired doctrine of universal application.

The time has come for us frankly to admit that our new foreign policy does not rest upon any fear of danger to our own peace and safety; but upon a desire to meddle in the affairs of others. We may also as frankly acknowledge that we are not at bottom so deeply concerned on behalf of Venezuela as a "*Sister Republic*" against the dangers to be feared from the monarchical institutions of Great Britain as Mr. Olney would have the world believe. We care much for republican institutions, but have yet some sense of proportion, and realize something of the difference between form and substance.

We know that the monarchical "system" against which the Monroe Doctrine was uttered does not exist in Europe to-day outside of Russia and Turkey; and, always excepting Mr. Olney, we are not greatly alarmed by the possi-

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bility that some time the "settled rule of a British colony" may prevail in a bit of disputed territory in South America in lieu of a corrupt military tyranny, which is merely a republic in name.

American civilization has substituted a state of peace for a state of war. Its fundamental idea is that the government exists for the people, not the people for the government. From this it follows that the nation can have no interest or duty apart from the people's welfare; that no question of national honor or dignity can properly arise, which is not directly related to their material or moral well being; and that it is the chief end of their government to maintain justice and peace, so that nothing shall interfere with the fundamental rights of the people to life, liberty, and the pursuit of happiness.

It is yet assumed, in lands where the people exist merely to serve the government, that no objection based on their material interests should be raised to any demand upon them in support of what the government chooses to regard as the national honor; but where the government is of the people, by the people, for the people, it has no right to interfere with their peaceful pursuits, except when the national life or character is endangered.

The idea that we have need of an aggressive foreign war at least once in a generation to keep alive our patriotism and preserve our manhood from effeminacy, deserves serious notice only because its advocates include men of education and position. Even Chief Justice Holmes of the Supreme Court of Massachusetts, in an address to students, urges that *"war is the business of youth and*

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early middle age"; that "*in this snug over-safe corner of the world*" we need its discipline to make us "*ready for danger*"; and that its losses would be a "*price well paid for the breeding of a race fit for hardship and command.*"

Such sentiments as these are worthy only of savages. They should not find expression in the land of Washington and Lincoln. If the nation as a whole must kill and destroy in order to maintain its physical courage and testify to its indifference to material gain, as Judge Holmes would have us believe, what answer shall we make to the individual who kills and destroys to maintain his personal courage, and to show his disregard for wordly gain and love for things of the spirit? We have as individuals left duelling and its code of honor behind. It is the American idea that nations should do likewise. Judge Holmes would have us believe that the profoundly difficult problems of peace, the subduing of a vast continent, do not furnish us sufficient opportunity. The time has come to preach and believe that the problems of modern life demand moral, rather than physical, courage.

" Life may be given in many ways,
And loyalty to trust be sealed
As bravely in the closet as the field."

It is a gross abuse for such a government as ours to appeal to the patriotic sentiment of the people in support of a meddlesome foreign policy touching matters in which they have no perceptible interest. Many of our great bankers and merchants have discharged a patriotic duty in protesting against such an appeal. They may well ignore all charges like that of Mr. Roosevelt that their

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conduct, in setting up the material interests of the nation against what he dignifies as the national honor, is infamous. Our civilization rests upon a vast system of trade and commerce, which extends round the world. It is the basis not only of our material, but moral well being. To give these vast interests free play by administering justice at home and cultivating peace and harmony with all the world, is the first duty of government.

We may well inquire whether the aggressive foreign policy upon which we have entered, is not merely a brutal expression of our awakening sense of the immense and growing importance of the United States to the world. We are becoming conscious of our strength, and wonder whether the world realizes it as we do. Our youth are nurtured upon the history of generations of strife. Our ideals of glory are derived from a military age whose clouds still obscure the modern sky. What we mean by national honor is derived from the duellists' code. We are envious of Great Britain's world-wide influence, gained under a theory of government which yet rates ships and guns and armed men above ideas, and which still proclaims that *might makes right*. For the moment forgetting Washington's vision of a national life that shall impress the imagination of the world by a spectacle of *peace, liberty, and prosperity*, we seek to imitate Great Britain in the field of foreign aggression, which she has made peculiarly her own, and in which we may scarcely hope to rival her at this late day.

This aggressive foreign policy, whose first fruits we have but tasted, does not become us well. It is a reversion

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to a lower type from that to which we are accustomed. It should be wholly abandoned before it becomes a national habit. Whatever we desire, and we may properly wish it so, our country shall henceforth have an increasing influence in the councils of the world. Even now her voice, when she but speaks in the ordinary tones in which gentlemen converse, is heard round the world. Already her strength and disinterestedness are so respected that she has only to speak words of soberness and justice to be heeded as well as heard. Why forego the advantages of so splendid a position? Why quit it to stand upon lower ground?

NATIONAL SELF-INTEREST: A REPLY TO WASHINGTON GLADDEN *

DR. WASHINGTON GLADDEN, in a recent article in "The Outlook" on "The Issues of the War" wherein he advocates a policy of national extension, clearly discloses the hazy state of mind of the philanthropic crusaders who have come to the support of the jingoes. Dr. Gladden states the position of the jingoes and severely rebukes it. He fails, however, to see that his own position if accepted will remove the only obstacle to their programme. The jingoes desire empire for its own sake. To them, the adoption by the United States of a policy of extension of its jurisdiction whenever possible in all parts of the world means a vastly increased national expenditure, a great army and navy, and indefinite multiplication of public places and contracts and untold opportunities for foreign plunder—in a word, unlimited spoils. To this end, the one thing required is the support by public opinion, not of their selfish motives, but of their policy. The danger of the hour is that they will continue to be so reinforced, by those who desire empire as the basis of a moral crusade for the renovation and improvement of the race, as to render all opposition to their policy futile.

Some of the jingoes, as Dr. Gladden says, "sneer at the folly of waging war for the welfare of an alien people." In return he severely arraigns them for seeking to lead

* The manuscript of this paper is dated July 30, 1898.

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the nation "into the business of wholesale robbery" that they may "take their chances of getting their full share of the booty." Yet, in pursuit of a vague philanthropy, he proposes to join hands with them in a common enterprise of territorial expansion. There is here no difference of national policy, only a diversity of motives among the supporters of a common policy. The jingoes would extend our national authority over the Philippines for purposes of plunder. It matters not to them that Dr. Gladden and his followers acquiesce to secure opportunity for the nation to perform what he conceives to be its duty to a weaker people. Only by a continuance of this coöperation of philanthropic crusaders with "pirates" and "buccaneers" (whom Dr. Gladden would "shoot on the spot") can public opinion be controlled in support of any considerable extension of our national authority.

"This nation will have to get the consent of its own conscience before going to war for any purpose whatever," as Dr. Gladden says. The jingoes alone could not have led us into this war. Upon the appearance of serious danger of war for mere conquest at their demand, Dr. Gladden would have been among the first to go gunning for them. The conscience of the nation was stilled into acquiescence, if not active approval, by sad stories of oppression and horrible pictures of starving women and children. True, as Dr. Gladden says of the members of Congress as to the existence of a republic, we were "doubtless very credulous" in regard to the situation. Some lingering misgivings as to the righteousness of our cause, or at least as to whether the resources of diplomacy were

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exhausted, may in part account for our cordial acceptance of English sympathy and support. The question now is, whether the consent or acquiescence of the national conscience thus obtained for the cause of a next-door neighbor, shall be extended to a policy of distant and general conquest.

Dr. Gladden acknowledges but "little patience with those [whoever they are] who are insisting that this nation owes no duties to weaker peoples; that it must forever maintain that attitude of isolation to which our traditional policy has committed it." He suggests "the pig who wallows in his own fat" as the type to which a century of egoism has brought us; and assumes that, in our isolation, we have performed none of our duties to our neighbors, and especially to "weaker peoples." This accords with much recent and indefinite talk of our national "isolation."

The time has come to call upon those who complain of our isolation for a bill of particulars. The nation is asked to abandon the tried policy of a century under which it has prospered and wielded a beneficent and growing influence in the larger world. That "humanity has come to the consciousness of its solidarity"; that we have an impulse to "smite misgovernment" wherever found, and thus contribute to "the enlargement of liberty"; that we should take control of foreign territory to "give the people a thousand times more liberty than they ever dreamed of possessing," furnishes no solution to the problem of the hour.

What duty to others has our country in the past left unperformed? When and where has our isolation led it

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to refuse or fail to share in "the work of the world"? In what particulars should it now change its attitude? What are its new duties, and to whom are they due? Is our new and aggressive foreign policy of general application, or is it reserved for "weaker peoples"? How shall we keep it from being an expression of brute force for conquest, and control it in the interests of a moral crusade? Will a burning desire to "shoot on the spot" those members of the expedition who would "break into any nation's territory" to plant there our flag "for purposes of conquest" prove sufficient to confine the crusade to purposes of "justice, honor, humanity"? Can we return to militarism without foregoing the advantages of a splendid position in which for a century we have cultivated "peace and harmony with all", "diffusing and diversifying by gentle means the streams of commerce, but forcing nothing"? In a word, why substitute a state of war for a state of peace? Why quit a commanding position to stand upon lower ground?

Dr. Gladden abhors what he regards the "immoral" policy of national self-interest. In this he is in practical accord with the jingoes. They do hold to a self-interest, but it has nothing national about it. While no one will accuse him of sharing any such interest, he and they agree in being impatient with those who hold that national self-interest, coupled with due regard for the rights of others, should always control national action.

Our government was formed "*to establish justice, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our*

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posterity." Its duty lies entirely within these purposes. American civilization has substituted a state of peace for a state of war. Its fundamental idea is that the government exists for the people, not the people for the government. From this it follows that the nation can have no interest or duty apart from the people's welfare; that no question of national honor or dignity can properly arise which is not directly related to their material or moral well being; and that it is the great end of their government to maintain justice and peace, so that nothing shall interfere with their fundamental right to life, liberty, and the pursuit of happiness.

The achievement by the United States of a position to command permanent peace, the opportunity for the steady pursuit by an entire people of their wonted avocations over a vast area, is the noblest triumph of civilization. The possibility that this unique position will be so used by us as to lead the race to abandon militarism and make of the entire world an arena for the cultivation of the arts of peace is to-day our most splendid vision.

Our jingoes and crusaders alike make a mistake in their impatience with those who would conserve the vast material interests of the people, and who (having some sense of proportion) would count the cost even of empire, whether for "philanthropy" or "piracy". Our civilization rests upon a vast system of trade and commerce. This foundation supports not only our material but moral well being. Indeed, only through the achievement of something above mere existence can an entire people hope to engage in cultivating the arts of life. Their largest possible employ-

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ment in productive occupations is the surest guaranty that they will also cultivate the things of the spirit. The greater and more continuous their prosperity, the more certain are they by voluntary combination and individual action to extend the blessings of education, liberty, and justice, to their weaker neighbors.

Government is not primarily organized for philanthropy, much less to educate and give liberty to foreign peoples. To secure to its own people the blessings of liberty, to obtain for them opportunity to pursue without interruption their wonted avocations, to conserve their vast material interests by administering justice at home and cultivating peace and harmony with all the world, has become the end of government. It has long been the glory of America that we are free from the military burdens which have so long rested with crushing weight upon the nations of Europe. For the moment, forgetting Washington's vision of a national life that shall impress the imagination of the world by a spectacle of peace, liberty, and prosperity, we have been brought to consider the surrender of our unique position, to inquire whether there is not something nobler in national life than may be realized from the cultivation of the arts of peace.

The assumption that we have heretofore wholly ignored our national duties to weaker peoples, cannot be admitted. We owe and have always performed important duties to such peoples. A growing consciousness of the solidarity of the race should lead us to hesitate to use our superior force against weaker peoples even for what we deem their own good. No lover of public order, whatever his regard for

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the Cubans, rejoices to-day to see Spain under martial law. We may still seriously consider whether we shall not continue to discharge at least our usual duties by cultivating "peace and harmony with all" the world and diffusing by gentle means the streams of our influence, "but forcing nothing."

Our choice does not lie between a national self-interest which ignores all moral obligations to others, and a policy that would steadily enforce such obligations by the warship and the bayonet, as Dr. Gladden assumes. It does lie between an opportunity to lead the world voluntarily to accept the blessings of liberty and peace, and a crusade to extend these blessings *vi et armis*.

Mr. Justice Bradley, in "The Civil Rights Cases," points out that there must be some stage in the progress of the elevation of the negro "when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws." Under republican institutions there is place only for "mere citizens." We can offer no asylum beneath the American flag either for "special favorites of the laws" or national wards. A nation which is committed to the proposition that all men are of inalienable right equal before the law, can make no provision within its jurisdiction for subject peoples. Indeed, democracy can know no subjects but only citizens. Taxation without representation is still tyranny. Government by force is still despotism. Force, even when touched with philanthropy, cannot be employed as a chief instrument of free government.

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THE visions of democracy are the ideals of America. These ideals, though yet far from full realization, have determined what is distinctive in our past. They alone give promise to our future.

We have too long regarded democracy merely as a method of government, simply as an alternative to absolute government in its varied forms. The desire for public order has led us to look to democracy as but a means to greater stability in political organization with better protection of life and property. We have endeavored to modify a static social order by giving it a somewhat broader base with increased powers of resistance. We have sought, by adding to its participants, to make government stable and public order an achievement. Thus we have partially realized something of liberty.

Democracy is more than a method of government. It seeks to destroy, not to occupy, the thrones of absolutism. It abhors all efforts to establish a static social order. It refuses to come to any sort of terms with external authority of whatever form or pretended source.

It is the aim of democracy to substitute inherent for external authority. It seeks to supplant a static by a dynamic social order. It invites from bondage to the

* During his last days Mr. Smith revised the first eleven paragraphs of the present paper, but his strength failed at that point. The remainder of the article follows the earlier draft.

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open air. Absolutism meant finality. Democracy means life.

The exercise of power was the aim of absolutism. The possessors of power privately owned the state. They exploited its resources in behalf of privilege. The centralization of power and influence in the absolute monarchs is thus expressed by Emerson, speaking of Napoleon: "A man of Napoleon's stamp almost ceases to have a private speech and opinion. He is so largely receptive, and is so placed, that he comes to be a bureau for all the intelligence, wit, and power of the age and country. He gains the battle; he makes the code; he makes the system of weights and measures; he levels the Alps; he builds the road."

Even yet the titular successor of William of Normandy is suffered in democratic England to speak in formal state papers of "my army," "my navy," "my loyal subjects," "my relations with foreign powers." Though successive waves of democracy have swept over the modern world, an age rich in achievement is widely given the name of a person of moderate capacity and common attainments who long chanced to occupy what was once a throne, the possessor of the mere shadow of a departed authority.

The sway of liberty is the aim of democracy. Under the democratic *régime* the commonwealth is the sum total of all who compose it. The State is only a means. The public authority is an instrument which none may possess and none may use save to promote the general welfare. Social order is coöperation. It rejects force to find a firmer basis in the concurrence of free wills.

Democracy is inclusive. Government is but one of its

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incidents. It sets the scene for all of man's activities. It gives to his life both meaning and opportunity.

A vision of equality of rights was the inspiration of our national life. The immortal declaration that all men are created equal—that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness—fitly expressed the ideal of democracy. We have striven as a nation to realize this ideal.

The Constitution created a national government to establish and maintain equality of personal rights. To this end, it commands that commerce be free and its necessary regulations uniform; that all duties, imposts, and excises be uniform; that all shall enjoy the privilege of the writ of *habeas corpus* and be alike protected from bills of attainder and *ex post facto* laws; that the citizens of each State shall enjoy all the privileges and immunities of citizens in the several States; and that none shall be raised above the rank of mere citizens.

Such was the constitution as adopted. It contemplated a government of uniform laws, representative of citizens possessing equal rights. Even these guarantees were regarded inadequate. The victors in a struggle of a thousand years against arbitrary power were not willing to leave anything to implication. The people willed that the results of that struggle should be embodied in their fundamental law. Thus the Bill of Rights was added by amendment.

Still the ideals of equality and of government by consent were but imperfectly realized. Human slavery, a

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monstrous anachronism, survived to give the lie to our fair professions of equality. A people that had renounced the institutions of king and nobility could not long look upon slavery without moral disquietude. Having escaped an aristocracy, they could not long tolerate slavery. The noble vision of equality of rights vouchsafed to the fathers inspired their children to strive for its realization. The Revolution bears witness to what the fathers dared that they might set up the ideal of equality. The mighty tragedy of civil war forever records what their sons suffered in striving to realize that ideal.

The revolutionists at the outset declared their splendid vision of equality of rights. In the hour of triumph they paused to set up a tabernacle to liberty, to record in the people's grant of power to a government expressive of their authority the personal rights already won.

The Constitution of the fathers established the equality of white men. The great charter of liberty, as it came from the furnace of civil war, proclaimed equality for all men irrespective of race or color. Thus equality of rights, the ideal of the Declaration, became the achievement of the Constitution.

That no victory in the struggle for lofty ideals, however complete, can be final is demonstrated anew by the events of recent years. It now appears that even the tremendous triumph that marks the close of the Civil War was but a step forward. To each generation is given the opportunity to contribute towards the realization of the end proposed.

The victors of 1865 thought it enough to embody in the Constitution the doctrine of equality of rights for all men

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irrespective of race or possessions. We now realize that although this was well, and possibly all that was then practicable, it was by no means final. The movement, begun by the adoption of the Constitution and continued in unbroken progress in its amendment, has been by us interrupted. Those who now represent us do not interpret the Constitution in the terms of liberty. The President and the Congress of the United States have assumed and now exercise absolute power. They to-day govern millions of men without consent. Americans, born and bred in the faith that taxation without representation is tyranny, sit at a table in Manila and make what they are pleased to call "laws" imposing taxes upon an unwilling and unrepresented people. Men, chosen to represent and act for us in pursuance of a written Constitution, exercise at Washington powers outside and in disregard of its limitations. The Supreme Court of the United States, seeking warrant for this assumption of arbitrary power, has restricted the application of the Bill of Rights to the States. Thus the rights that we had supposed pertain to men as men under the Constitution have become merely a matter of locality. The self-evident truths of the Declaration are self-evident only within State lines. The will of the President and the Congress, not the Constitution, is the supreme law within the territories and islands of the United States.

True, the authors of these startling innovations make loud professions of a benevolent design. The President, in creating by his ukase the Philippine Commission, conferred upon it "that part of the powers of government which is legislative in character" and directed it, "for

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the sake of the liberty and happiness" of the people of the islands, to observe an expurgated version of the Bill of Rights by him set forth in his letter of instructions. The Secretary of War, in his annual report for 1899, said:

I assume . . . that the people of the islands have no right to have them treated as States, or to have them treated as the territories previously held by the United States have been treated, or to assert a legal right under the provisions of the Constitution . . . or to assert against the United States any legal right whatever not found in the treaty. . . . The people of the ceded islands have acquired a moral right to be treated by the United States in accordance with the underlying principles of justice and freedom, which we have declared in our Constitution.

The adoption of doctrines so destructive of American ideals led ex-President Harrison just before his death to enter a solemn protest. In his address to the students of the University of Michigan he said:

Our fathers were not content to hold these priceless gifts under a revocable license. They accounted that to hold these things upon the tenure of another man's benevolence was not to hold them at all. Their battle was for rights, not privileges—for a constitution, not a letter of instructions.

The man whose protection from wrong rests wholly upon the benevolence of another man or of a congress, is a slave—a man without rights.

We are bound to believe that appeals like this to what is fundamental in American ideals and in human nature itself will be heeded; that we shall again respond to the inspiration of our history; and that we may then again on patriotic occasions freely refer to the Declaration of Inde-

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pendence, the Constitution of the United States, and the teachings of George Washington and Abraham Lincoln, without violating the proprieties. We shall not long permit any man, or group of men, to quarry out of the Constitution rights for gracious bestowal on the people of our territories and islands. We shall permit no man, or group of men, to make of the inalienable rights of free men a mere matter of gift or of locality. We shall allow no man, or group of men, to limit the application of the Bill of Rights, or to deny equality of rights anywhere within the jurisdiction of the United States. The judicial invention of "lands appurtenant to the United States" inhabited by subjects without rights is abhorrent to American ideals. We cannot abandon our ideals; we must decline to hold any territory that may not be governed by American methods. Despotism and delegated authority are to-day exercised by American officials at Washington. These forces are as old as history. They cannot long exist together. Our choice lies between them.

Absolutism sought by force to maintain an artificial public order. Democracy seeks by coöperation to secure a genuine public order. Absolutism produced a political and social fabric of narrow base and unstable equilibrium. Democracy has created an inclusive political and social fabric of superior powers of resistance. It was the aim of absolutism, as we have seen, to exercise political power as an end. It is the aim of democracy to exercise power only as a means. The practical significance of this distinction is often overlooked. The governmental agents of democracy have too often assumed that the exercise of power

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is the end of democratic, as well as of absolute, government. Permanent political parties having power as their end, with but an incidental obligation to solve political problems some way or other as they arise, have succeeded to the role so long played by monarch and aristocrat. Hence, thus far democracy has partly failed of its aim. It is yet not unlike the *régime* which it succeeded, permanent parties having taken the place of the former possessors of political power.

It has been truly said that the essence of monarchy is not so much the presence of the king as the absence of the people in all the important transactions of government. It is the essence of American institutions that our governments are but agencies whose sole function it is to express the will of the people whom they represent. In so far as they fail in this, they fall short of the American ideal of government. Here again our ideal is in advance of our practice. This does not require a lowering of our ideal; it calls for an improvement in our practice.

It is ever to be remembered that American democracy has set for itself a tremendous task. It assumes that the people constitute the sole source of authority; that the several governments of their creation are but expressions of that authority. Hence, government with us rests on public opinion, not on force. It exists solely to promote the public good, not that of a privileged class or order. To succeed, it must be the resultant of a wide coöperation. It may exercise only such authority as is conferred upon it by those to be governed.

A government resting on force is like the centurion

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whose servant Jesus healed: "For I am a man under authority, having soldiers under me; and I say to this man, Go, and he goeth; and to another, Come, and he cometh; and to my servant, Do this, and he doeth it." The task of a government thus able to command instant and unquestioning obedience differs widely from that of a representative government, resting on public opinion. The one stands for a militant organization of society. The other is the resultant of a coöperative social order. The one acts quickly and decisively. The other works out its results by slow processes. The task of the latter is vastly the more difficult; but its results when obtained are more secure. Its superiority over the former is the superiority of modern democracy over the military monarchy of feudalism.

There are some among us who have grown impatient of the processes by which government by discussion works out its results. They want the government to be "efficient"; that is, they want it to respond quickly to their touch. They applaud the official "who does things"; who acts and then submits for approval, not the original question of policy, but an existing *status* of his own creation. They want franchises and contracts and canals while they wait, with precious little waiting at that.

It must be confessed that democratic government is not "efficient" in the sense the word is used by those whose purposes will not bear discussion and who want quick and decisive action. A government to be thus efficient must respond to the touch of a single hand; at best it can act for but few. The task of democratic government

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is to act for all. It must gather up, correlate, and finally express the wishes of many. Those through whom it acts must represent and express the will of the majority of the citizens. To be effective, it must strictly observe established precedents and pursue authorized methods of procedure. In matters of first instance or grave importance, it must consult and await the command of public opinion. Short cuts are open to private government by one man or by a few men. A government of the people must follow the beaten path.

A government resting on public opinion can succeed only by methods which invite and permit discussion. Hence the need of a public forum, a place where the representatives of the electors may meet to discuss and transact the public business. It is the function of the courts to interpret the laws, of the executive to execute them; the legislature alone can make laws for, that is declare the policies of, a self-governing people. Hence, the tendency to abandon the legislature to special interests, and to seek relief in an executive dictatorship backed by the negative power of the courts, cannot be regarded an advance. It is a retreat by those who are too indolent or too selfish to pay the price of representative government.

It is frequently said that "democracy is on trial." Some even assert that its failure is foreshadowed by the condition of city government throughout the United States. Those whose grasp of democratic institutions is thus tentative, living as they do under their sway, probably have not considered an alternative. A slight effort

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to find one would convince him who is most dissatisfied with existing conditions under democratic government that there is no alternative.

Mr. Ostrogorski, in his great work on "Democracy and the Organization of Political Parties," after stating that "Hitherto the victorious struggle which democracy has carried on in the world has been mainly, and necessarily, a struggle for material liberty; moral liberty, which consists in thinking and acting as free reason dictates, has yet to be achieved by it," says:

Through the mere fact of having realized material liberty, democracy has given more happiness to the nations than the other *régimes* had ever afforded them; "the greatest happiness of the greatest number" has never been less distant from its realization than in the present day. . . . The disorders of which democratic government has presented or continues to present the spectacle in certain countries are paralleled or equalled, to say the least of it, by the experience of the anterior *régimes*; but the latter had no political liberty to compensate them and to cure their ills, and they have passed away. Democracy has brought with it liberty, and it has renewed the life of societies.

These passages from one who has sounded the resources of despotism, should admonish some among us to talk less glibly of the failure of democratic government. We are committed to democracy. We are absolutely without other resource. We have no reserve of intelligence or virtue on which to draw.

Who among us may pass judgment against democratic institutions? Who of us may determine that the others are unworthy to participate in the government of their coun-

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try? By what warrant shall some, or one, assume to govern all?

True, all do not and cannot equally contribute to good government. The ballot is something more than a means to an altruistic end; it is a weapon of defense. In the hands of the weak, it is a means of protection from the aggressions of the strong. To-day, our chief danger is not from the poor and the ignorant. American liberty is threatened by the rich and cultured scoundrels who exercise the public authority for their own ends. Neither the possession of riches or knowledge, nor both, ever made a man or any number of men fit to exercise despotic authority over other men.

We have seen that the tests of efficient government under absolutism and democracy are not the same. What may be termed good government under an absolute monarch or privileged class would be bad government tested by the democratic ideal. Public order, resulting from efficient and honest administration, is an important but not the supreme test of good government. The real test involves the question of liberty. As Kossuth said: "No nation can remain free with whom freedom is a privilege and not a principle." The enjoyment of liberty as an inalienable right is the supreme test of good government. This alone concedes to every individual the right from which flows as from a living spring all other rights. Under any form of government life and property may be protected. Only where there is liberty is opportunity secure. That government, then, is good under which all enjoy liberty with opportunity to strive for better con-

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ditions, opportunity to coöperate to secure and maintain public order, opportunity for each to work out his destiny in his own way.

Good government is not something to be once achieved and thereafter merely enjoyed. It is not to be won by a single victory, or held by an indefeasible title in fee simple. Good government is not a result; it is a condition. It is not an achievement; it is an opportunity. When one approaches a great mountain he usually finds its lofty peak buttressed about by high plateaus and lesser peaks, with its sides protected by jagged rocks and slippery glaciers and descending avalanches. Again and again, as he strives to reach the summit, he sees towering above him a peak which appears to be his goal only to find on attaining it a landmark of the ascent. So with the democratic ideal of good government; democracy creates conditions giving to all liberty and opportunity to strive for what they deem good, to coöperate for the attainment of their ideal of social order.

It is worth much, as we strive for social and political order, to realize that we are not required to complete the task, leaving those who come after us only to enjoy the fruits of our labors. It is required of us, if we would but do our duty, to get and keep the trend right, taking some positive steps towards the realization of our ideals. For example, we are just beginning to realize that our municipal governments, acting as they do as agencies of the State, are undemocratic; that, unless our rapidly increasing urban populations are to be denied representative government, our cities must be made democratic; and that

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the government of the city must as directly represent its people as the government of the State represents the people of the State. It is our opportunity and our duty, discerning this defect in our organic law, to seek a remedy. It may be quite beyond our powers within our day to establish throughout the country genuine municipal self-government; but we may set the trend right, insuring the ultimate success of this fundamental reform. To discern the needs of the time and create conditions that must finally result in meeting them is glory enough for an individual or an age.

Lowell, when asked by Guizot how long he thought the American republic would endure, at once replied: "So long as the ideals of the men who founded it continue dominant." It is the glory of the founders that they made their ideas the ideals of the republic. Through more than a century of changing vicissitudes these ideals have inspired and dominated our national life. Yet our performance still falls short of our professions of loyalty to them. Alike in Nation, in State, and municipality the public authority is largely exercised for private ends. We permit, almost without protest, the denial of equal rights to our fellow citizens in many of the States. We deprive another people beyond the sea of the liberty which is the birthright of all men. It is not enough that we still profess love for the forms of free institutions. It is not enough that we celebrate the anniversaries of Washington and Lincoln. If a noble past is to be the inspiration of noble days to come, we must continue to carry American ideals into American action. If a sturdy loyalty to these ideals

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is not to give way to an enervating sentimentalism in respect to them, we must at whatever personal cost make them live in all the activities of our national life. If American democracy is to fulfill its promise, it must cherish its ideals as the very essence of its being.

That American ideals will finally triumph over all obstacles we cannot permit ourselves to doubt. "It is the political and social forms anterior to democracy which are dead." The future belongs to democracy. It alone can furnish a basis broad enough for its expanding life. It is not ours to win its final victories. It is for us, in our day and generation, to keep the trend right. This is our task; this is our opportunity.

ANTI-IMPERIALISM

CONSTITUTIONAL GOVERNMENT IMPERILED *

Great captains with their guns and drums,
Disturb our judgment for the hour,
But at last silence comes.

— *Lowell.*

THE silence has come in which but the echoes of the guns and drums of our great captains remain. The time has arrived which calls for the exercise of judgment undisturbed by excitement or passion. We stand face to face with problems which require prompt solution. Those who represent us, with sword in hand, demand of millions of people but just escaped from one foreign oppressor, humble submission and blind obedience. Unconditional surrender and unquestioning acceptance of another military authority are made conditions precedent even to a definite statement of our purposes in respect to a great archipelago in which our doubtful interest is but a probable quit-claim deed of a title by force. We are about to succeed to Spain's contested title. We have already, at least for the present, succeeded to her methods. Whether we are merely to take her place does not yet appear. The President only ventures to propose "the success of our arms and the maintenance of our own honor," and to relegate the "whole subject" of "the welfare and happiness and rights of the inhabitants of the Philippine Islands" to Congress, which he says is "the voice, the conscience, and the judgment

* Reprinted from "Self Culture," April, 1899.

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of the American people." This want of a definite policy has already led to dire results. To wait until the proper time comes to act is one thing; to let loose the dogs of war and wait for a programme is to confess that we are adrift.

The necessity, the wisdom, even the justice, of our war against Spain are still widely doubted. Whether our interference in a quarrel that was not ours, whether our breach of the peace of the world after Spain had conceded our reasonable demands, can be justified, depends almost wholly upon our execution of the far greater task that remains. The final verdict upon our action will depend on its results rather than its manner or occasion. The problems which now confront us involve vastly more than a few petty additions to our trade, or even the welfare of the alien peoples of some remote islands.

The fundamental question arises, By what authority and under what restraints may Congress undertake to rule subject peoples? The acquisition of distant islands, already fully occupied by half-civilized races wholly unfit for self-government, and having a climate in which white men cannot or will not live, is but an incident in an established national policy or a vital departure from that policy. If the former, we have but promptly to admit these islands to statehood, as we have done with all earlier acquisitions of territory of sufficient population. If the latter, we cannot too soon determine to what extent we may assume to govern or share in governing their people without the exercise by Congress of self-assumed and arbitrary powers.

The Constitution created a nation of States, "an indis-

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soluble union of indestructible States." It called into being a "United States of America," not a "United States of America and Asia." It was its purpose "to form a more perfect [not a less perfect] union . . . and secure the blessings of liberty to ourselves and our posterity." Every person born or naturalized within the Union was to be a citizen of the nation and of the State of his residence. All the people of the nation were to constitute a brotherhood of citizens having equal rights before the law, which might not be denied or abridged because of race or color. There were to be no subjects, but only citizens. The government was to derive its powers from the consent of the governed. This consent was to be manifested by something more than mere acquiescence. It contemplated the active participation by the governed in a government which was to be only theirs, and which they would alone control. Congress might organize territorial governments for the administration of the sparsely settled national domain outside of the States; but the territorial form of government was to be but temporary and merely preparatory to statehood. Such was our scheme of popular government; and until by the chances of aggressive and almost uncontested warfare we blockaded a single port of a distant archipelago inhabited by half-civilized and savage men, there was none among us to wish it otherwise.

The question now is, Can these islands be acquired without their becoming the property, the territory, of the United States? If such territory, they will at once be subject to our Constitution and general laws. The moment new territory is incorporated into the national

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domain its inhabitants, without naturalization, become citizens of the United States, and as such "entitled to all privileges and immunities of citizens in the several States." The Supreme Court has held that "the provisions of the Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the territories of the United States";* that Congress, in legislating for the territories and District of Columbia, is subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments;† and that all citizens of the United States have "the right to come to the seat of government," to have "free access to its seaports," and to pass freely from one part of the country to every other part.‡ The Supreme Court has also, within a year,—under the clause of the Fourteenth Amendment which provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,"—held that American-born Chinamen of alien parentage are citizens and free from the provisions of the exclusion acts and treaties; also that Congress has no authority "to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right of citizenship."§ Section 1992 of the Revised Statutes of

* *Thompson vs. Utah*, 170 U. S. 343, 346; *Callan vs. Wilson*, 127 U. S. 540, 550.

† *Mormon Church vs. United States*, 136 U. S. 1; *McAllister vs. United States*, 141 U. S. 174, 188; *American Publishing Society vs. Fisher*, 166 U. S. 464, 466.

‡ *Crandall vs. Nevada*, 6 Wall. U. S. 35.

§ *United States vs. Wong Kim Ark*, 169 U. S. 649, 702.

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the United States, passed by the Congress which framed and proposed the Fourteenth Amendment, provides that "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States." This does not make residence in a State a condition of citizenship of the United States. As it was framed by the same Congress at the same time, it and the amendment may safely be assumed to be in harmony.

The Supreme Court has also said:

The power to expand the territory of the United States by the admission of new States is plainly given; and, in the construction of this power by all the departments of the government, it has been held to authorize the acquisition of territory not fit for admission at the time, but to be admitted as soon as its population and situation would entitle it to admission. It is acquired to become a State, and not to be held as a colony and governed by Congress with absolute authority. . . . Whatever the political department of the government shall recognize as within the limits of the United States, the judicial department is also bound to recognize, and to administer in it the laws of the United States so far as they apply, and to maintain in the territory the authority and rights of the government; and also the personal rights and rights of property of individual citizens, as secured by the Constitution.*

The same court, as late as 1884, said: "The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and national; their political rights are

* *Dred Scott vs. Sanford*, 19 How. 393.

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franchises which they hold as privileges in the legislative discretion of the Congress of the United States." *

Here lies the distinction. Congress possesses the same general powers, subject to the same limitations, over territories and their people as it exercises over the States and their inhabitants. In addition it has the same powers in respect to the local affairs of the territories, subject only to the same constitutional restraints as the States exercise over their local affairs. Congress has in the territories the sum of national and local legislative powers, subject to the limitations and restraints of the Constitution.

The Supreme Court, after the acquisition of California and before its admission as a State, applied to it the constitutional provision that "all duties, imposts, and excises shall be uniform throughout the United States," and said:

By the ratification of the treaty, California became a part of the United States. . . . The right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision of the Constitution which enjoins that all duties, imposts, and excises shall be uniform throughout the United States. Indeed, it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from the payment of the same duties which were chargeable in the other ports of the United States.†

The Supreme Court has further said:

It cannot be admitted that the king of Spain could, by treaty or otherwise, impart to the United States any

* *Murphy vs. Ramsey*, 114 U. S. 15, citing *Dred Scott vs. Sanford* with approval; *Mormon Church vs. United States*, 136 U. S. 1.

† *Cross vs. Harrison*, 16 How. 198.

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of his royal prerogative; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of its own government.*

The constitutional power of Congress to "make all needful rules and regulations respecting the territory or other property of the United States" thus appears to have important limitations. If the Constitution is to remain the supreme law of the land, if its historic and natural interpretation is still to be given effect, certain definite conclusions are irresistible. Among them are these: All islands acquired through the war against Spain, and made part of the territory of the United States, will be subject to its Constitution and general laws. Their inhabitants—at least those hereafter born—will be citizens of the United States and of the several States in which they choose to reside. As citizens they will come and go at will throughout the entire country. Their government by Congress will be subject to the fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments. By high tariff imposts under the constitutional requirement of uniformity, we shall grind their people into the dust as Spain has done before us.

These conclusions follow, as the night the day, from the interpretation of the Constitution of a century by the highest judicial authority. This interpretation was directly due and incident to the enormous acquisitions of territory which

* Pollard vs. Hogan, 3 How. 312.

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are now so much relied on as a justification for acquiring the Spanish islands. Yet there are those who, while protesting that the acquisition of these islands is but an incident of an established policy, deny these conclusions. Indeed, a new school of constitutional interpretation is arising among us to meet the exigencies of what is in fact a novel national adventure. Professor Langdell of Harvard and Dean Judson of the University of Chicago have already supplied a construction of the Constitution calculated to enable those in authority to do in the Spanish islands whatever the ground reports that anybody else desires done. It is not easy for a lawyer seriously to regard a constitutional interpretation based on an express denial of a conclusion of Chief Justice Marshall. That the new doctrine ignores a long line of decisions by the Supreme Court of the United States but adds to the difficulty. However, the novel doctrine announced as the result of these academic reëxaminations of the Constitution calls for serious inquiry. If sound, it provides a plain and easy road to the destruction of constitutional government.

Professor Langdell,* as the result of his inquiry into the meaning of the term "United States," cheerfully overrules the conclusion of Chief Justice Marshall that "it is the name given to our great republic, which is composed of States and territories," the District of Columbia and the territories being "not less within the United States than Maryland or Pennsylvania." He also disregards the line of decisions to the same effect above cited, and finds that the term "United States," when used to designate

* "Harvard Law Review" for February, 1899.

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extent of territory, means only "the States in the aggregate," and that "the Constitution of the United States does not extend beyond the limits of the States." He concludes that the United States "comprise the territory of the forty-five States, and no more"; that "it does not follow, because a department of the government is created and organized by the Constitution with reference solely to a given territory, that therefore the power of that department and its sphere of action are limited to that territory"; that the judicial department of the government of the United States is so limited, but not so the legislative and executive departments; and that "the legislative and executive departments are sovereign in their nature, and therefore their power and sphere of action are co-extensive with the sovereignty of the United States, of which sovereignty they constitute the vital part." It follows that "in the legislative and executive departments is vested all the sovereign power in our new territories that has been delegated by the people." Professor Langdell also concludes that this power is without other restraint than the clause of the Thirteenth Amendment, which forbids slavery or involuntary servitude, "except as a punishment for crime, whereof the party shall have been duly convicted."* Dean Judson† having reached quite similar conclusions, they may be assumed fairly to represent the trend of thought among such of those who favor the retention of the Spanish islands as have yet seriously tried

*There are, by the way, large judicial possibilities in the words "duly convicted."

†"Review of Reviews" for January, 1899.

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to meet the grave difficulties of a vital change in our national policy.

Thus is found an assumed basis for legislative and executive absolutism, free from a judicial restraint which have heretofore held both Congress and the President to the observance of the Constitution throughout the entire territory over which the sovereignty of the United States has extended. While the Supreme Court may be relied upon to make short work of the extraordinary proposition that its jurisdiction extends only to the territory of the forty-five States, beyond whose limits the legislative and executive powers are without restraint except as to slavery, what its production at this crisis signifies is worthy of serious attention. Professor Langdell admits that resort to it heretofore has been unnecessary, because, "first, all the different parcels of territory acquired by the United States from time to time (with the unimportant exception of Alaska) were contiguous either to existing States or to territory previously acquired; secondly, none of them differed more widely from the States in soil and climate than the States differed from each other; thirdly, they were all virtually without inhabitants and were expected to be peopled by emigrants from the States, from the British islands, and from western Europe; fourthly, they were all expected, at an early day, to be formed into States, and as such to be admitted into the Union; fifthly, none of them produced (to any extent) dutiable articles . . . ; sixthly, they all bordered upon navigable waters, through which the products of all foreign countries could easily be

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imported, and, if admitted free of duty, could be smuggled thence into the States." It is perfectly true, as Professor Langdell adds, that "with the acquisition of Hawaii and the Spanish islands, however, all these conditions are radically changed." It is not as certainly true, as he claims, that "none of these islands have been acquired with a view to their being admitted as States." Indeed, if we may believe the President, they have not been acquired with any view whatever, but solely in pursuit of a fatalism in the form of a vague destiny which we might not escape. Our authorities are, after acquisition in fact, professedly groping for a purpose and a programme.

The propositions that Congress and the President may without restraint acquire and hold territory that shall not be subject to the Constitution and general laws of the United States, that mere creatures of the constitution may exercise powers conferred by it to lay and collect taxes and raise and equip armies forcibly to acquire personal possessions to be by them despotically ruled, are subversive of constitutional government. These proposals are truly imperial, and have in view a republic at home and an empire abroad. They mean that it is now seriously proposed among us to establish a dual government at Washington, half representative and half despotic in character. This is in pursuit of a recent English precedent under which Victoria is known as "Queen of England and Empress of India." It is already quite within the range of possibility that the President may be known as "President of the United States and Emperor of the Philippines." That

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will at least indicate his functions if the above proposals are sound and present action in their pursuit is to be permanent.

We have long rejoiced in a government of laws rather than of men. It has been our greatest glory that none among us might exercise arbitrary powers. All in authority over us—legislative, executive, and judicial officials—have exercised but delegated powers. They have acted as the servants and with the consent and coöperation of the people. They have in all things been subject to the Constitution and laws made in its pursuance. They have been solemnly sworn to support the Constitution of the United States, and strict obedience to its commands as the supreme law of the land has been the test of their official fidelity. It is now proposed that, in addition to their constitutional duties as the servants of a free people, Congress and the President shall arbitrarily assume functions of an entirely different character; that with one hand they shall exercise delegated and defined authority, and with the other self-assumed and arbitrary powers. In America they are to exercise certain powers with the consent of the governed; in the Philippines, and wherever else destiny may lead, they are to ask only “the consent of their own conscience” and what they shall be pleased to assume is “the approval of civilization.” This hybrid may or may not be “imperialism.” It certainly is not constitutional government.

Congress and the President are but creatures of the Constitution. It exists “to form a more perfect union, to establish justice, ensure domestic tranquillity, provide for

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the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." They exist by its sole authority to carry out its great and worthy purposes, and for nothing else whatever. To say that officials created by the constitution may exercise powers which it confers to do things without its purpose and beyond its authority, is to say that a stream may rise higher than its source. To say that Congress and the President may use the revenues of the United States and employ its army and navy to acquire territory which shall not be subject to the Constitution, is to say that they may exercise their constitutional powers for extra-constitutional ends, that they may use the public revenues and exercise public authority for other than public purposes. If only their action within the States is controlled by the Constitution, if beyond the States they may act at will and without restraint, then their will and not the Constitution is the supreme law.

The assumption that Congress and the President may, under any circumstances or upon whatever pretence, exercise powers derived from the Constitution for other than constitutional purposes, is not only novel but fraught with the gravest dangers. It involves the admission that mere creatures of the Constitution may, without regard to its provisions, arbitrarily determine their functions. It is a fundamental canon of constitutional construction that the federal authorities can exercise only expressly delegated powers. To admit the contrary is to concede that their powers are without limitation.

This demand for a construction of the Constitution

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which will permit a government at Washington that shall be half representative and half despotic in character is, however, by no means all. It is but the first step in a backward course into which we are drifting. Those among us who have so suddenly awakened to what they are pleased to call our national "isolation" exhibit an ill-concealed contempt for the counsels of the fathers and a growing impatience with the Constitution itself. They have just discovered that the nation has become a giant who "is no longer content with the nursery rhymes which were sung around his cradle."* They regard the Farewell Address outgrown, and hold that even the Monroe Doctrine has become shopworn or at least of but one-sided application. It is said: "We have outgrown the Constitution. It is not worth while to discuss it."† "The Constitution must bend."‡ "Governments derive their just powers from the consent of *some* of the governed."§ "A constitution and national policy adopted by thirteen half-consolidated, weak, rescued colonies, glad to be able to call their life their own, cannot be expected to hamper the greatest nation in the world."§ Our great questions of administrative, civil service, and financial reform have suddenly become "parochial." The business of a mighty nation has as suddenly become "artificial and transient." Our people are called to abandon "the treadmill round of domestic politics" for "new thoughts, new questions, new fields, fresh hopes, broader views, wider influences."¶

*President Northrup at Chicago Peace Jubilee banquet.

† General Merrit.

‡ President Capen.

|| Senator Platt.

§ Franklin MacVeagh.

¶ Attorney General Griggs.

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These quotations, selected from many, are here produced merely to show a trend of thought which is believed to bode no good to constitutional government.

It is the nature of arbitrary power to grow by what it feeds on. This is especially true of unrestrained military power. When wielded by "those who have things to do" it is apt to be much less tedious in its operation than are the slow processes through which government by public opinion works out its results. For this reason delegated authority and arbitrary power do not work well together. Indeed, those who are now trying to act at one and the same time as the public servants of a free people and as the despotic rulers of subject peoples already exhibit signs of impatience with the old methods, even at home. The words "treason" and "traitor" have been widely hurled at senators of the United States merely because they were unwilling to surrender their constitutional duty carefully to consider and discuss the treaty of peace. The term "rebel" has been freely applied to people while yet Spanish subjects, who never owed allegiance to the United States. In the house, on February 25, Mr. Cannon said: "If the speech of the gentleman from Kansas, and those of some other gentlemen on the other side, made yesterday, had been made by them yesterday in Manila, they would have been arrested, tried by a drumhead court-martial, and shot." Members of Congress who fail to agree with Mr. Cannon are not at present in much danger of drumhead courts-martial; but we shall see the spirit of impatience with constitutional processes grow apace if our public authorities are permitted permanently to make large use of the

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agencies of arbitrary power. This may be good "imperialism," but it does not promote government by constitutional methods.

The question should now be pressed. To what end are these grave dangers which we have so lightly assumed and even sought? For what sufficient purpose is the character of our government to be changed? We hear much about destiny, and see many good men in the expansion current in pursuit of a vague philanthropy. Many stand ready to vouch for our ability to expand beyond seas, but few venture affirmative reasons why we should do so. Mr. Reid assures us that "the world will never again be in doubt whether, when driven to war, we will end it in a gush of sentimentality or a shiver of unmanly apprehension over untried responsibilities." Possibly this is important, if true. The Filipinos have been advised "that the mission of the United States is one of benevolent assimilation." The President, in his Boston address, by way of defence of an insecure position, claims that we took the islands from necessity, and lays the blame on God. He says: "The Philippines, like Cuba and Porto Rico, were entrusted to our hands by the providence of God." If this be true, it ends the discussion. However, it is yet novel doctrine that public servants may substitute what they guess to be the will of God for the constitution and laws of the land. In this entire matter there has been somewhat too much certainty as to the Divine will, and too little attention to constitutional requirements and difficulties. Constitutional restraints are of course annoying to those who see arbitrary power within their grasp. It must not be for-

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gotten, however, that it is the main purpose of a written constitution to define the functions of public officials and to hamper their action. Our public authorities cannot too soon be called to account and made to know that "benevolent assimilation" of peoples wholly unfit to be incorporated into our citizenship is not within the province of constitutional government. There is no provision in the constitution directing the President to use the army and navy in foreign missionary work. It is no part of the duty of a constitutional government to make "contribution from our ease and purse and comfort to the welfare of others." Congress has "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States," and for no other purpose. Unless Congress may use the revenues and forces of the United States for other than constitutional purposes, it cannot use them to acquire, and to enforce its reign over, territory that is not subject to the Constitution.

The most extraordinary reason given for the proposed retention of the Philippines is that the inhabitants are wholly unfit for self-government. That is, they, or at least their children, are to be made citizens of the republic for the express reason that they are unfit for American citizenship.

We have heretofore acquired territory only that it might in due time take its place in the sisterhood of States, and that its inhabitants might share with us on equal terms the blessings of free institutions. All our constitutional amendments have had in view the extension of the princi-

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ple that governments derive their just powers from the consent of the governed. Every step in our national progress has been marked by new guarantees for the security of personal rights. Even aliens among us share the main privileges and immunities guaranteed by the Constitution.* The inhabitants of the territories of the United States have thus far shared these rights. Shall this line of progress under free institutions now be interrupted? Is it not rather late for us to discover that governments derive their just powers from *some* of the governed? Shall we at this late day concede that Congress has discretionary power to make the Constitution and laws of the United States general or special? Shall we now admit that personal rights and immunities beneath the American flag are not fundamental, but discretionary with Congress? These questions are fundamental if free government is to continue even at home. The supremacy of the Constitution must be preserved, unless ours is to become a government by men instead of a government of laws.

The United States may and should decline to accept the sovereignty of any of the islands of which it has deprived Spain. It may encourage and aid in the formation of the best native governments now possible. With such sovereign governments it may then enter into treaties providing for the "open door," for consular courts, with jurisdiction of all questions affecting foreigners, and for the supervision by the United States, for a time, of their foreign relations. In return for these concessions the United States might also for a time guarantee such governments

* *Wong Wing vs. United States*, 163 U. S. 228.

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from foreign interference. In this way we can exhibit to the world a national disinterestedness which is now widely questioned, secure all proper rights for our commerce and that of other commercial nations, and discharge any real or supposed duty to the peoples of these islands. Thus will be secured to their peoples the greatest good,—freedom from outside aggression, and opportunity to work out their own salvation in their own way.

Our choice does not lie between a national self-interest which ignores all moral obligations to others, and a policy that would steadily enforce such obligations by the warship and the Maxim gun. It does lie between an opportunity to lead the world voluntarily to accept the blessings of liberty and peace and a crusade to extend these blessings *vi et armis*.

It is a law of physics that two bodies cannot occupy the same space at the same time. Abraham Lincoln but stated the application of this law to the realm of politics when he declared that "this government cannot endure permanently half slave and half free." Under his own splendid leadership his prediction that the Union would cease to be divided was gloriously fulfilled. The question for our generation is whether we shall voluntarily again divide it; whether we shall permit to be set up at Washington despotic power, there to compete with delegated authority for final supremacy; whether, in our desire to rescue others from excessive taxation, we shall take it upon ourselves in perpetuity; whether, in the vain effort to share our institutions with half-civilized men, we shall destroy their character.

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IT is high time to inquire, To what end do we continue Spanish methods in the Philippines? Why this terrible sacrifice of American lives? By what authority has Mr. McKinley sent forces, recruited to win liberty for Cuba, to wage war against liberty in Asia? Why has he sent brave men to death wondering "What are we fighting for?" Why this awful slaughter of natives? To what purpose have we taken upon ourselves the burden of excessive taxation in perpetuity? For what sufficient reason, after more than a century of unparalleled achievement, have we become unfaithful to the traditions and principles which have made America distinctive among the nations of the world? Why do we allow our chosen representatives to assume arbitrary power? Why do we permit the establishment of a dual government at Washington, half representative and half despotic? To what end do we destroy the character of our institutions in a vain effort to share them with alien races?

These inquiries involve vastly more than a few petty additions to our trade or even the welfare of the people of some remote islands. In the language of Senator Hoar, they involve "a greater danger than we have encountered since the Pilgrims landed at Plymouth—the danger that we are to be transformed from a republic, founded on the Declaration of Independence, guided by the counsels of

*Address at the Chicago Liberty Meeting, April 30, 1899.

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Washington, into a vulgar, commonplace empire, founded upon physical force."

True, Mr. McKinley says that "no imperial designs lurk in the American mind. They are alien to American sentiment, thought and purpose. Our priceless principles undergo no change under a tropical sun. They go with the flag."

These are fine phrases; but we shall do well, as Mr. Boutwell suggests, not to confuse the issue with what Mr. McKinley says. The inquiry must be confined to what he does. What he and others have said, aided by his military censor, has too long diverted public attention from the deep significance of the facts. That an administration, chosen to save the country from financial chaos on a platform which as to foreign policy merely promised carefully to watch and guard "all our interests in the Western Hemisphere" and employ the "influence and good offices" of the United States "to restore peace and give independence" to Cuba, should so far commit the country to a dangerous and revolutionary policy is itself a gross betrayal of the principles of representative government.

The imperial policy being new to us, none has arisen to defend it on the merits. We are, however, assured by Mr. McKinley that "the Philippines, like Cuba and Porto Rico, were entrusted to our hands by the providence of God." If this is true, Providence made a poor delivery of the corpus of the trust. What we have is a mere quitclaim of a disputed title to property adversely possessed. Destiny, to say nothing of Providence, usually does much better in transferring territory from the weak to the strong.

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It is widely urged that the chance location of a naval battle, even the hoisting of a flag without authority, has imposed upon us "a white man's burden" from which we may not without dishonor escape. If such are the consequences of unpremeditated action, we should pray to be delivered from naval victories and flag-raising.

The claim is also pressed that by the destruction of the Spanish fleet in Manila Bay we at once became responsible for public order in the Philippines and especially for the lives and property of foreigners resident there. We know how a few widows as stockholders of corporations are made to do duty in their defense against the righteous claims of the public. In the same way a few foreigners in Manila are made an excuse for a great injustice to a vast native population. Foreigners in whatever country subject themselves and their property to its laws and protection. Their residence is from choice and they cannot complain if accorded such security as the people of the country enjoy.

It is a bold assumption that the Filipinos will loot and murder. They have not done so. The only breach of public order since the close of the Spanish War has been in fact due to our presence in the islands. Our authority has at no time extended beyond the range of our guns. We have for some months held 200 square miles of territory having a population of about 800,000. As for the remaining 200,000 miles of territory, with a population of perhaps 8,000,000, public order has been maintained for months by the people themselves. Beyond our lines, upon the testimony of our own officers, good order has prevailed

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and life and property have been secure. The shameful truth is that desolation and ruin mark the character and limits of our influence in the islands.

It was said of Cæsar that he killed 1,000,000 Germans, created a solitude and called it peace. Under the ghastly pretence of extending "the blessings of civilization" we are to-day carrying death and ruin into the country of a peaceful people. In the name of humanity and public order, in the name of civilization, in the defence of our own honor, even in the sacred cause of religion, we have assumed the role of bloody crusaders and let loose the hell hounds of aggressive war. When we have turned the Filipinos into corpses we shall pronounce them pacified.

To kill, save in self-defence, is murder. To drive away women and children and burn their houses is outrage and arson. By this code we measure the conduct of the individual. Are these crimes less criminal when committed by a nation? Is war, except for national self-preservation, aught but the most monstrous of crimes?

The war against the Filipinos has not even the poor excuse of legal authority. It is no part of the war against Spain. It was not declared by Congress. A number of our wars with inferior races are known in history by personal names. To King Philip's War and others of this class must be added William McKinley's war.

The vital defect in Mr. McKinley's policy lies in his purpose to extend American sovereignty over an alien and unwilling people. The contention that our will, not theirs, shall be done in the Philippines runs counter to the law of our being as a nation. Our government rests upon the

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proposition that the right of self-government is inherent in every people and cannot become the subject of grant. All its powers are delegated by the people. It is without power graciously to grant to the Filipinos such measure of self-government as it shall from time to time deem them fit to enjoy.

The *Tribune* this morning says that this meeting is to announce that "the American people cannot be trusted to give the Filipinos a just government." The reply to this is, that it is not the duty of the American people to give government, whether just or otherwise, to anybody. Their own government is organized to secure the blessings of liberty to themselves and their posterity, to enable them to govern themselves, and not as a source of any kind of government whatever.

Self-government has never fallen upon a people like a manna from above. It has everywhere been a self-achievement, a growth from within, not a deposit from without. If the Filipinos are really to be free, they must achieve freedom for themselves. Their right is to work their own way to self-government free from outside interference.

We forget that the Filipinos may not wish to be as we are, that a people may be happy and even prosperous under institutions unlike our own, and that even our duty to civilization may not require us to become benevolent assimilators of inferior races. In our desire to impose our institutions upon this alien people we disregard their right to govern—yea, even to misgovern—themselves. We have suddenly become strangely sensitive to danger to life and

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property, especially the lives and property of a handful of foreigners, in the Philippines. It seems that supposed and self-assumed duty to civilization requires us at once to secure in the islands a degree of security for life and property which prevails nowhere on this continent south of Mexico, a security which does not prevail at this moment in all parts of our own land. Had we insisted in 1865 on guarantees of public order in Mexico, Maximilian would have remained its emperor. Mr. Seward at that time correctly stated our true position in urging the principle which "the United States hold in relation to all other nations," that "they have neither a right nor any disposition to intervene by force in the internal affairs of Mexico, whether to maintain a republican or even a despotic government there, or to overthrow an imperial or a foreign one, if Mexico shall choose to establish it or accept it"; and he finally insisted upon the withdrawal of the French troops solely upon the ground that we would not permit the establishment of a foreign government in Mexico against the will of the Mexican people.

Forcible annexation of the Philippines can no more be thought of in 1899 than in 1898. What would have been "criminal aggression" last year is criminal aggression this year. It is as true at the close of the nineteenth century as it was at the end of the eighteenth that taxation without representation is tyranny and that force cannot be employed as a chief instrument in the government of a free people. The Filipinos must themselves choose; for us to impose upon them a government would be rank disloyalty to our most cherished principles.

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The powers that shall henceforth be exercised in the government of the Philippine Islands must come from their people or from Washington. Such powers have neither been delegated nor can they be delegated to Mr. McKinley. The powers which he has thus far exercised in his personal crusade in behalf of trade and religion are self-assumed and despotic in character.

The Constitution makes no provision for the forcible intervention by our government in the affairs of a people who do not form an integral part of the Union. To the extent we permit our chosen representatives to exercise arbitrary powers, whether at home or abroad, we allow them to sap and destroy representative government itself. Mr. McKinley is introducing at Washington the principles and methods of absolutism. He mistakes a passion for power, which is as old as despotism, for the currents of destiny. There are currents of destiny, but they set toward human freedom and away from despotism. If we, the people, are to continue to rule even at home, we must reject the despot and his methods, although they come to us uttering fine phrases about benevolent assimilation, priceless principles, and hoisted flags.

At this moment in our country, in our own city, the right of free men — whose duty it is to pass upon the acts of their official servants — to know the truth and to utter their protest is questioned. The word "rebel" is freely applied to men who never owed allegiance to the United States. The spirit of impatience of constitutional processes has already reached the stage in which the words "treason" and "traitor" are made to do duty in defense of arbitrary power.

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The question is squarely presented, shall ours become a government of men instead of a government of laws? The powers which Mr. McKinley claims in the Philippines cannot be exercised by a government which is merely representative.

Despotic power has already appeared at Washington, there to compete with delegated authority for final supremacy. These forces are as old as history. They cannot exist together. Our choice lies between them.

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THE foregoing quotations, [not reprinted here] chosen mainly and almost at random from official utterances, afford glimpses of an amazing modern crusade. They disclose our trusted representatives in the act of seeking the Filipino alliance. They bear witness to the "coöperation" for many weeks of our naval and military commanders with "Gen. Aguinaldo, Commanding the Philippine Forces" against "a common enemy." They are conclusive that when the Filipinos became our allies they believed, and we knew they believed, that the object of the alliance was their independence. They indicate the transformation of a war for liberty in Cuba into a war against liberty in Asia. They show how a much vaunted crusade for humanity became a brutal war of "criminal aggression." They make it perfectly clear that the most brazen mendacity cannot alter or suppress a shameful record.

The cause of Aguinaldo has not changed. If he deserved success in 1898, he deserves it now. If he was a leader with whom our forces might properly coöperate then, he is not now the chieftain of "robber bands." Admiral Dewey and Generals Anderson and Merritt were his comrades in honorable warfare or his accomplices in brigandage.

The fate of Aguinaldo and his cause is but an incident

*Address at the Anti-Imperialist Conference, Philadelphia, February 23, 1900.

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of an awful tragedy. The deliberate murder by American hands of the best hope of native government in the Philippines, the ruthless slaughter of the Filipinos in the name though not by the authority of the American people, is horrible enough. It is, however, but an incident of the betrayal on American soil of the principle of self-government by the McKinley administration.

True, Mr. McKinley says that "the Philippines, like Cuba and Porto Rico, were entrusted to our hands by the providence of God." We shall do well, as Mr. Boutwell suggests, not to confuse the issue with what Mr. McKinley says. His acts are more significant than his words. It was no mysterious hand that caused the so-called "treaty of peace" to be read thus:

Spain relinquishes all claim of sovereignty over and title to Cuba. . . . Spain cedes to the United States the island of Porto Rico. . . . Spain cedes to the United States the archipelago known as the Philippine Islands.

It will not do to let the author and finisher of this precious document hide behind the "providence of God." The treaty with Spain did not fall upon us like manna from above. It cannot be accepted as the basis of discussion. On its face appears the sinister purpose to do in the Philippines what we solemnly promised not to do in Cuba. If the forcible annexation of Cuba would be "criminal aggression," pray what is the forcible annexation of the Philippines? When, in defiance of the law of nations we interfered, both were struggling against a common oppressor for independence. One, lying near our shores,

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might possibly become fitted to share our institutions. The other, situated far beyond our borders, can have no other than an artificial relation to us. Why by a single stroke make one free and the other a subject province? There is no answer that is honorable to American statesmanship.

The assumed success of Mr. McKinley's war of "criminal aggression," the destruction by his hand of native government in the Philippines, brings us face to face with a proposed task which we cannot perform and retain the self-government in which we have so long rejoiced. To enter upon it involves a vital change in our institutions. To succeed in it we must surrender the noble achievements of our past, forsake the advanced ideals of our national life, and abandon the ground which Washington pre-empted and Lincoln made ours.

The Constitution created a nation of States, "an indestructible union, composed of indestructible States." It was its purpose "to form a more perfect union . . . and secure the blessings of liberty to ourselves and our posterity." Every person born or naturalized within the United States was to be a citizen of the nation and of the State of his residence. All people of the nation were to constitute a brotherhood of citizens having equal rights before the law, which might not be denied or abridged because of race or color. There were to be no subjects, only citizens. The government was to derive its powers from consent of the governed. This consent was to be manifested by the active participation by the governed in a government which was to be their own and by them controlled. New territory might be acquired, but only in due

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course to become States. In the language of the Supreme Court, "It is acquired to become a State, and not to be held as a colony, and governed by Congress with absolute authority." *

Such, in brief, was the ideal which for a century and a quarter we cherished, the plan of popular government to which until two years ago we were true. It is now first proposed to abandon this ideal and destroy the results of its pursuit. We, who inherit the teachings and achievements of Washington and Lincoln, are asked to seal with our approval the betrayal of their principles. We are expected to tolerate and even applaud the acquisition of territory by the President and Congress to be by them ruled without constitutional warrant or restraint. We are to permit mere creatures of the Constitution to exercise powers, acquired and held under it, to do things without its purpose and beyond its control. Constitutional powers and agencies are to be used to promote ends that are without and beyond the Constitution. The seeds of dual government at Washington are already sown. The President and Congress are to be no longer mere servants of a free people. It is proposed that they shall henceforth wield both constitutional and extra-constitutional powers. With one hand, they are to continue (for the time being) to exercise delegated and defined authority; with the other, they are to execute self-assumed and arbitrary powers. This is what the proposal to rule the Spanish islands outside the Constitution means. Upon the brink of this precipice we stand.

* *Scott vs. Sanford*, 19 How. 393.

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These extraordinary proposals are thus, in part, stated by Secretary Root:

I assume . . . that the United States has all the powers in respect of a territory it has thus acquired, and the inhabitants of that territory, which any nation in the world has in respect of territory which it has acquired; that, as between the people of the ceded islands and the United States, the former are subject to the complete sovereignty of the latter, controlled by no legal limitations except those which may be found in the treaty of cession; that the people of the islands have no right to have them treated as States, or to have them treated as the territories previously held by the United States have been treated, or to assert a legal right under the provisions of the Constitution . . . or to assert against the United States any legal right whatever not found in the treaty.

The so-called treaty of peace thus becomes the Magna Charta, the Bill of Rights, and the Constitution of the ten millions of civilized human beings who are natives of the Spanish islands. What rights, wrung for them from unwilling Spain, are by this precious modern charter of liberty guaranteed to them? These are few and simple, as follows:

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

It is also declared that the relinquishment or cession of Spanish sovereignty cannot impair the property or rights pertaining thereto "of provinces, municipalities, public or private establishments, ecclesiastical or civic

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bodies, or any other associations having legal capacity to acquire and possess property . . . , or of private individuals."

Thus in a dozen lines of a treaty, made as we are assured in their interest though without their consent, the natives of the Spanish islands may find all their legal rights set forth. Not only so, but in the same lines they may also find the claims of a State church to much of the desirable property of their islands carefully preserved and protected. This shows great progress in the power of condensed statement. By comparison, what a waste of words appears in our Magna Charta, Declaration of Independence, Bill of Rights, and Constitution! We need not wonder, as we stand with uncovered head in the presence of this final charter of liberty, that there are those among us who regard our musty and verbose charters "outgrown."

The simple terms and limitations of this precious document also bear concrete testimony to Mr. McKinley's faith in what he calls "the wisdom of Congress." In this he has also made a great advance over the suspicious framers of the Constitution. They feared and refused to commit the liberties of three million people to the tender care of a Congress of their own choice and directly responsible to themselves. He neither fears nor hesitates to commit the liberties of ten million souls to the control of a Congress of another race in no way representative of, or responsible to them. He says that he has every (undisclosed) reason to believe that his new wards share his own faith in the wisdom of Congress. He even believes that a simple despotic government imposed upon them by him is "in accord-

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ance with the wishes and the aspirations of the great mass of the Filipino people." It, however, requires the presence in the Philippines of some eighty thousand American soldiers to aid them in realizing their alleged "wishes and aspirations."

This "treaty of peace," or new charter of liberty, is of course to be interpreted in the light of Mr. McKinley's purpose of "benevolent assimilation." It is in this spirit that Mr. Root, in his annual report as Secretary of War, proceeds as follows:

The people of the ceded islands have acquired a moral right to be treated by the United States in accordance with the underlying principles of justice and freedom which we have declared in our Constitution, which are the essential safeguards of every individual against the powers of government, not because those provisions were enacted for them, but because they are essential limitations inherent in the very existence of American government.

Thus it appears, that by reason of a treaty in the making of which they did not share, the Filipinos have acquired rights both legal and moral in character. Their rights of property and security in the exercise of religion are in some sense legal. Their civil rights and political status rest on moral sanctions. How thankful they should be, especially for the assurance of Secretary Root, that they have acquired a moral right to be treated by their alien masters "in accordance with the underlying principles of justice and freedom." It seems that but for this precious treaty they would be without even moral rights. Anybody can see that by virtue of the treaty they have become entitled to "such measure of liberty as Congress shall from time to

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time deem them fit to enjoy." What more can an "inferior race" ask of its masters? What matter if the liberty which comes without effort and as a benefaction to its recipients is a plant of slow growth? These people live in the tropics. Who ever heard of such people caring much for liberty? They may thank their lucky stars that they have been committed to the tender care of such good masters. If their chance of liberty is slight, what they get will cost them nothing, not even a thought. It ought also to be worth something to tropical islanders to be but one remove from Mr. McKinley's "providence of God."

Mr. McKinley's Porto Rican dilemma was anticipated by those who refused to join hands with him in his war of "criminal aggression" in the Philippines. They foresaw the irrepressible conflict that is now on between those who love the principles of the American Constitution as it is and those who would fling those principles aside in pursuit of colonial empire. During all the years of a glorious century that constitution has been the supreme law of a land composed of States and territories in preparation for statehood. Under its sway representatives of the people have exercised none but delegated powers. Their government has been an expression, not a source, of authority. It has expressed the coöperation through which they obtained for themselves the security of public order, the blessings of self-government. They did not create it a government of inherent powers. It was but the agent by means of which they sought to secure the blessings of liberty for themselves and their posterity. It neither exercised despotic authority over them or over others. It

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was not set up to rival royalty. It was not to become an oppressor, but to create a refuge for the oppressed. It was simply a "government of the people, by the people, for the people."

Such are the ideals that some among us assume to be "outgrown." They have tired of the splendid preëminence of the greatest of republics. Like the people of Israel they would have theirs as other nations are. They are ambitious for it to become what they are pleased to call a "World Power." To this end, they seek to restrict the authority of the Constitution to the States, and to have the President and Congress exercise powers derived under the Constitution as a basis of extra-constitutional action. In a word, they propose to have a republic at home and an empire abroad. This calls for a dual government at Washington, half representative and half despotic in character. A government which is but an expression of the sovereignty of the people is to become one having both delegated and inherent powers.

The danger involved in these startling proposals is by no means imaginary. We are already face to face with an old question—one that we long supposed to be forever settled for Americans. Are the powers of government conferred by the people, or are they inherent in the king? It has been truly said that the essence of monarchy is not so much the presence of the king as the absence of the people from all the important transactions of government.

Congress and the President are merely agents of the people. They act under the authority of the constitution to carry out its expressed purposes. If it extends only to the

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territorial limits of the States, they are without power behind such limits. To say that officials created by the people may exercise powers conferred upon them by the constitution to do things without its purposes and beyond its control, is to say that a stream may rise higher than its source. To say that the President and Congress may use the forces and revenues of the United States to acquire territory which shall not be subject to the constitution as the supreme law of the land, is to say that they may exercise powers acquired under the Constitution for extra-constitutional ends, that they may employ the public revenues, forces, and authority for other than public purposes. If only their action within the States is controlled by the Constitution, if they may act beyond the States at will and without restraint, then their will and not the Constitution is the supreme law. If the Constitution is to remain the fundamental law of the land, it can never under whatever pretence be admitted that officials holding under it may act beyond the limits of its authority.

The people of the United States are sovereign. Their government is but an agent exercising delegated powers. Its several departments can exercise no powers which are not delegated. All powers not delegated are reserved by the people to themselves. A self-governing people cannot confer on its governmental agencies authority to rule over others. The might of a people, no more than that of a king, is a warrant to reign. A representative government can act only for those represented. It cannot also rule others without ceasing to be merely representative. Abraham Lincoln in memorable words declared that "this

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government cannot endure permanently half slave and half free." Under his splendid leadership the Union ceased to be divided. It is for us to decide whether it shall be again divided, whether it shall be half republic and half empire.

Thus we see that the proposal to restrict the authority of the Constitution to the States, in order like certain others to have "crown colonies" and "subjects," involves a fundamental change in our institutions. A government must have and execute powers. These must be derived from, and exercised subject to, the consent of the governed, or they must be self-assumed and exercised without restraint. They must proceed from the people to a governmental agency, or they must be inherent in the government itself. Heretofore our government has been solely charged with the execution of powers conferred by the governed. It has exercised none but delegated authority. It is now seriously proposed that within the States it shall continue in the exercise of this authority; and, in addition, that it shall assume and exercise despotic power over the territories and such colonial dependencies as it may choose to acquire. It is to represent democracy in the States and stand for absolutism in its dependencies. With one hand it will administer for a "superior race" the blessings of free government; with the other it will bestow upon "lesser breeds without the law" such measures of good government as it deems them fit to enjoy. In its capacity as an agency of a free people, it will conserve rights guaranteed to them by the Constitution; as the vanguard of returning despotism, it will confer favors on "inferior

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racess." The undisguised basis of this policy is inequality among men. Its purpose is to stay the hands of progress, to escape from the consequences of democracy.

The parts of this dual government cannot remain distinct. They will act and react upon each other. It may be conceded that our "assimilation" of subject peoples, so far as it goes, will be more or less "benevolent," that the "moral rights" of the natives of the islands, which Mr. Root admits to be limitations upon his proposed despotism, will be somewhat observed; and that the government bestowed from Washington upon them will not be wholly bad. On the other hand, it will not do to forget that the United States is to be the military base of the new despotism; that we, the people, are to furnish the enormous revenues and powerful forces needed to acquire and maintain colonial dependencies; and that, as it becomes more evident that arbitrary power is much less tedious in its operation than are the slow processes through which government by public opinion works out its results, the present ill-concealed impatience of constitutional restraints will grow until only the forms of representative government remain. Despotism and democracy cannot exist together. Reversion to despotism means the surrender of democracy.

We already see, in the vast increase of unrestrained executive activity, the greatest danger to constitutional government. Under ordinary conditions the power of the President within its scope is well nigh absolute. Prof. Simeon E. Baldwin of Yale has recently pointed out "that of the leading powers of the world, two, only, in

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our time, represent the principal of political absolutism, and enforce it by one man's hand. They are Russia and the United States." To the extent that we permit one man to exercise uncontrolled power we resort to the dictator.

Mr. McKinley has gone to great lengths in introducing at Washington the methods of absolutism. He promptly relegated to the rear the issue upon which he was chosen, violated the pledges of his party platform as respects our foreign policy, committed the country to a revolutionary course, deliberately created a state of war in the Philippines, debauched the civil service to promote the adventure, and demanded of all citizens a suspension of judgment and unanimous support while he sees fit to continue the fighting, or until further notice from him. The powers which he exercises to-day in Cuba, in Porto Rico, and in the Philippines are those of a military despot.

A comparison of the Republican platform of 1896 with the entire action of the present administration will disclose how absolute are the powers which Mr. McKinley has assumed. The point here is that an imperial policy vastly increases the opportunity and even the necessity for the exercise of uncontrolled executive power. If we are to have "crown colonies" and "subjects," we must likewise have a despotic executive.

Let us, however, not deceive ourselves. Liberty is not mocked. The Constitution still lives as the supreme law of the land. This is by no means its first trial. It survived the storm and stress of the slavery conflict, in the words of James Bryce coming "out of the furnace of civil war with scarce the smell of fire upon it." Those, who mys-

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teriously intimate that "some way will be found to get around the Constitution" in pursuit of empire, have yet to reckon with the Supreme Court of the United States. That great tribunal is by no means likely to abdicate its functions. It may be relied upon to make short work of the extraordinary proposition that its jurisdiction extends only to the forty-five States, leaving Congress and the President free to act at will beyond their limits.

The Supreme Court has again and again exercised jurisdiction over the territory of the United States lying outside the States. Chief Justice Marshall himself has defined the term "United States" as "the name given to our great republic, which is composed of states and territories."

We may, therefore, conclude that all the islands acquired by the United States and made permanently part of its territory will be subject to its Constitution and general laws; that their inhabitants, at least those hereafter born, will be citizens of the United States and of the several States in which they choose to reside, and as such privileged to come and go at will throughout the entire country; that their government by Congress will be subject to the fundamental limitations in favor of personal and civil rights, which are formulated in the Constitution; that the tariff wall which we have so long maintained about the United States must be extended to embrace them, giving to them absolute free trade with us; and that, as the Constitution is not based on inequality among men, they cannot be held as colonies and their people treated as subjects.

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The final question is whether the Constitution ought to provide for colonial dependencies. If so, it should be amended to this end. All our constitutional amendments have had for their object the better protection of the rights of the citizen. Each new amendment has directly or indirectly added new guarantees for the security of personal rights. Not one has tended to promote absolutism. Shall the movement, begun by the adoption of the Constitution and continued in unbroken progress by its amendments, now be reversed? Is it not rather late for us to discover that government derives its just powers from *some* of the governed? Shall we, at this late day, concede to Congress discretionary power to make the constitution and laws of the United States general or special? Shall we subject the personal rights and immunities of citizens to the discretion of Congress? Are we prepared to let Congress say in what parts of the United States speech shall be free? Shall Congress determine to what extent imposts, duties, and excises shall be uniform? Are we ready to surrender, or even impair in any particular, the bill of rights? Above and beyond all, shall we now by evasion, construction, or amendment, deliberately embody in our fundamental law the principle of inequality among men? If so, we are false to our heritage, unworthy of our birthright, and deserve to be ourselves enslaved. What we cannot do by way of amendment of our fundamental law we must not permit to be accomplished by its evasion.

It is strongly urged upon us that "right or wrong this thing is going to succeed," and that we should join with those who would make the best of the retention of the

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Spanish islands. It is especially objected that our opposition is vexatious and even treasonable. We decline this invitation and here give notice of our purpose to maintain free speech in America, even in the presence of an imperial executive who demands exemption from public criticism. We regard what has happened in the Philippines as wholesale murder and larceny; we have had no part in it; and we refuse to become accomplices after the fact.

We have come to the city of the Declaration of Independence to drink deep at this fountain of human liberty. We here renew our faith in self-government and pledge ourselves to do all that in us lies for its preservation. We still cherish the principles for which Washington fought and Lincoln died. We hold that taxation without representation is still tyranny. We declare relentless war on "the miners and sappers of returning despotism." We will neither compromise nor surrender. "Our reliance is in the love of liberty which God has planted in us. Our defence is in the spirit which prizes liberty as the heritage of all men in all lands everywhere."

THE CONSTITUTION AND INEQUALITY OF RIGHTS*

THAT the United States may acquire territory, as raw material for future States, is unquestioned; that the United States acquired whatever title Spain then had to Porto Rico and the Philippines, by the Treaty of Paris, is conceded. What is disputed is the novel claim that the United States may adopt and enforce, in the government of these islands, the principle of inequality of rights. All our prior acquisitions of territory were sought for settlement by our people, to become the home of our institutions, to expand the domain of equal rights, to enlarge the area of constitutional liberty.

A vision of equality of rights was the inspiration of our national life. The immortal declaration that all men are created equal—that they are endowed by the Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness—fitly expressed the ideal of democracy. To achieve this ideal we have striven for more than a century. In its pursuit we have organized, established constitutions, legislated, administered.

The great purpose of the Constitution was to establish equality of personal rights. To this end it commands that commerce be free and its necessary regulations uniform throughout the United States. Authority to tax rests upon representation. Congress may lay and collect

* Reprinted from "The Yale Law Journal," February, 1901.

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taxes, duties, imposts, and excises; but taxes must be according to population, and "all duties, imposts, and excises shall be uniform throughout the United States." All exports are exempt from duties. Laws affecting naturalization and bankruptcies must be uniform. All enjoy the privilege of the writ of *habeas corpus*, and are alike protected from bills of attainder and *ex post facto* laws. All are to be mere citizens, free from the overshadowing influence of a nobility. The revenues of the people may be drawn from the public treasury only by means of appropriations made by law. The courts exist for all, including even aliens, without discrimination. All, when charged with crime, are alike protected in their right of trial by jury where the crime was committed. The citizens of each State are entitled to all the privileges and immunities of citizens in the several States. Nothing is supreme but the law of the land.

Such, in substance, was the Constitution as first adopted. It contemplated a government of uniform laws over citizens possessing equal rights. Even its guarantees were not accepted as adequate. The victors in a struggle of a thousand years against arbitrary power were unwilling to leave anything to implication. The people demanded that the results of that struggle should be embodied in their fundamental law. Hence the bill of rights was at once added by amendment. Thus, by the amended Constitution, all white men secured freedom of religion; freedom of speech; freedom of the press; freedom of assembly; the right of petition; the right to bear arms; the right to be

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secure in their persons, houses, papers, and effects; the right of trial by jury in criminal proceedings and in suits at common law; exemption from prosecution for infamous crimes, unless on presentment or indictment of a grand jury; security from being placed twice in jeopardy for the same offence; security from being required in criminal causes to be witnesses against themselves; the right of speedy and public trial by an impartial jury in all criminal prosecutions within the State and district where the crime is committed; the right, when charged with crime, to be informed of the nature and cause of the accusation, to be confronted with the witnesses for the prosecution, to have compulsory process to compel the attendance of witnesses in their favor, and to have the assistance of counsel for their defence; freedom from excessive bail, from excessive fines, and from cruel and unjust punishments; freedom from the taking of private property for public use without just compensation; and freedom from deprivation of life, liberty, or property without due process of law.

Even this inventory of personal rights, each term of which is the title to a chapter in the story of constitutional liberty, was not regarded as inclusive. The Ninth Amendment states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Still the ideals of equality and of government by consent were but imperfectly realized. Human slavery, a monstrous anachronism, survived to give the lie to our fair professions of equality. A people that had renounced the institutions of king and nobility could not long look upon slavery without moral

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disquietude. Having escaped an aristocracy, they could not long tolerate slavery. The noble vision of equality of rights vouchsafed to the fathers inspired their children to strive for its realization. The Revolution witnesses what the fathers dared that they might set up the ideal of equality. The mighty tragedy of civil war forever records what their sons suffered to realize that ideal.

The revolutionists at the outset declared their splendid vision of equality of rights. In their hour of triumph they paused to set up a tabernacle to liberty, to record in the people's grant of power to a government expressive of their authority the personal rights already won. In their hour of triumph the victors of 1865 placed in the Constitution new guarantees of equality.

The Thirteenth Amendment declares that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. The Fourteenth Amendment makes all persons born or naturalized in the United States citizens thereof and of the State wherein they reside. It also provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. The Fifteenth Amendment declares that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

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The Constitution of the fathers established the equality of white men. The great charter of liberty, as it came from the furnace of civil war, proclaimed equality for all men irrespective of race or color. Thus equality of rights, the ideal of the declaration, became the achievement of the Constitution. Thus a lofty sentiment was realized in the fundamental law of the land.

The events of two years have brought us some grave questions. Shall the evolution of American liberty be reversed? Shall the movement, begun by the adoption of the Constitution and continued in unbroken progress in its amendments, be stayed? Shall we no longer interpret the Constitution in the terms of liberty? Shall the President and Congress govern men without their consent? Shall the representatives of a free people act for others than those represented? Shall the creatures of the Constitution exercise any power anywhere outside and in disregard of its limitations? Shall we make rights a mere matter of might and locality? Shall we make inequality of rights, by amendment or evasion of the Constitution, lawful under the American flag?

The "grave departure from right principles" which gives rise to these inquiries is not a mere remote possibility. The executive and legislative branches of the government have done and are doing their utmost to make it an accomplished fact. It is the essence of the Porto Rican legislation. It lies at the bottom of the administration's Philippine policy. Thousands of lives have been sacrificed and hundreds of millions of the people's earnings squandered in its pursuit. A vast naval and military establishment,

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one of the costliest in the world, is being provided by a perversion of constitutional powers as a means for a career of conquest. Each step is accompanied by an apology, coupled with a protest that it does not involve the next. To-day the President, backed by the Congress, stands at the bar of the Supreme Court demanding complete exemption from constitutional control in the government of the territories of the United States and in the acquisition of unlimited possessions for other than constitutional purposes. This demand, if granted, means equal rights for all under the Constitution while within the States, and inequality of rights for all under a congressional absolutism when outside the States.

The Secretary of War, in his report for 1899, says:

I assume . . . that the United States has all the powers in respect of a territory it has thus acquired, and the inhabitants of that territory, which any nation in the world has in respect of territory which it has acquired; that, as between the people of the ceded islands and the United States, the former are subject to the complete sovereignty of the latter, controlled by no legal limitations except those which may be found in the treaty of cession; that the people of the islands have no right to have them treated as States, or to have them treated as the territories previously held by the United States have been treated, or to assert a legal right under the provisions of the Constitution . . . or to assert against the United States any legal right whatever not found in the treaty.

"The Outlook," a leading exponent of the new policy, declares that the United States "must take such place as its position, its character, and its powers entitle it to assume among the nations of the earth; . . . that it ought not to confine its interests or limit its duties by any

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geographical consideration whatsoever; that it ought to share with the world powers in the government of the world."

These quotations fairly represent the thought and purpose of those who would reintroduce into our system the doctrine of inequality of rights. True, they have again and again irrelevantly declared it to be their intention to exercise absolute power over the inhabitants of the ceded islands in a spirit of subjective benevolence. Thus, Secretary Root, in the report above quoted, adds:

The people of the ceded islands have acquired a moral right to be treated by the United States in accordance with the underlying principles of justice and freedom, which we have declared in our Constitution, which are the essential safeguards of every individual against the powers of government, not because those provisions were enacted for them, but because they are essential limitations inherent in the very existence of American government.

Mr. McKinley himself continues to make profuse though vague promises in recognition of what Mr. Root concedes to be the "moral right" of the Filipinos to be treated by the United States in accordance with the principles of justice and freedom. From his early promise of "a government which will bring them blessings" down to the recitals in his last annual message, these new "wards of the nation" may read of "the benefits of liberty and good government" which he says shall be theirs "in the interests of humanity," of the moral rights which by grace they are to acquire. By military order, through the Secretary of War, he exhorts his present Philippine commissioners to "bear in mind that the government which they are

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establishing is designed not for our satisfaction, or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands."

Mr. McKinley, by the same order, declares it to be his paternal will that —

the people of the islands be made plainly to understand that there are certain great principles of government, which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law; and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar. . . . Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that no person shall be put twice in jeopardy for the same offense, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involun-

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tary servitude shall exist except as a punishment for crime; that no bill of attainder or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press, or the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof; and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.

These representative citations are here given to exhibit the spirit in which it is proposed to bestow what is called "good government" on all citizens of the United States while outside the States. Upon them, as "wards of the nation," are to fall by grace selected "moral rights" in name akin to some of the equal and inalienable rights of citizens while within the States.

Mr. Hoar has made final answer to the proposal to bestow upon these new "wards" by grace some part of what is the right of every free man. In his great speech of April seventeenth in the senate, he says:

Our imperialistic friends seem to have forgotten the use of the vocabulary of liberty. They talk about giving good government. . . . Why, Mr. President, that one phrase conveys to a free man and a free people the most stinging of insults. In that little phrase, as in a seed, is contained the germ of all despotism and of all tyranny. Government is not a gift. Free government is not to be given by all the blended powers of earth and heaven. It is a birthright. It belongs, as our fathers said, and as their children said, . . . to human nature itself. There can be no good government but self-government.

Whence comes the authority of any man, or group of men, to select from and quarry out of the Constitution

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rights for gracious bestowal on the people of the territories and islands of the United States? By what warrant does any man, or group of men, in America presume to make of the inalienable rights of free men a mere question of might, only a matter of locality? Whence does any man, or group of men, derive authority to place limitations on the application of the Bill of Rights, to deny equality of rights under the Constitution of the United States?

Those who in our time profess inherent authority to make of liberty itself a gift to other men now come, as tyrants have ever come, with honeyed words upon their lips. If we may credit some fine professions now current in high places, the denial of equality of constitutional rights to the people of the territories and islands of the United States is merely to clear the way for the bestowal of analogous "moral rights" at such times and in such doses as the donors in their superior wisdom deem the donees strong enough to bear. Equality of rights is not denied to the inhabitants of the Spanish islands in order by grace to bestow upon them the immunities and privileges enjoyed under the Constitution by the citizens of the States. On the contrary, equality of rights is denied in order that the President and Congress may govern the people of these islands by power as absolute as is anywhere known. Indeed, Mr. Root, as we have seen, declares that the United States (meaning the President and Congress) have all the powers which any nation in the world has in respect to acquired territory. That is, they may govern it by power as absolute as that wielded by the Russian czar.

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Note carefully the studied omissions from Mr. McKinley's expurgated version of the bill of rights set out above. By these omissions the Filipinos are denied many of the most sacred rights of free men. They may be taxed without representation and without regard to uniformity. Their revenues may be expended without authority of public law. They are denied the right to bear arms. They are denied the right of trial by jury in criminal proceedings as well as in suits at law. They may be prosecuted for infamous crimes without presentment or indictment of a grand jury. The speedy and public trial which is promised may be by court-martial ordered to sit anywhere, however remote from the place where the crime was committed. The privilege of the writ of *habeas corpus* is denied. There is for them no equal protection of the laws.

Even the "moral right" of the new "wards of the nation" to be treated in accordance with the principles of justice and freedom is, it seems, subject to important and wholly arbitrary limitations. The power to bestow involves the power to deny. The power to grant involves the power to withdraw. What may be granted or withheld may be withdrawn or abridged.

The policy thus disclosed and now applied offers to the inhabitants of the ceded islands no shield but benevolence against wrong, no constitutional protection, no hope of liberty. It seeks by force to establish government without consent, taxation without representation, tyranny by the crowd. It means the government of men by arbitrary power. This is imperialism.

The novel assumption that mere agencies of constitu-

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tional government may exercise powers beyond the domain of the constitution, and the proposal by this means to reintroduce into our system the principle of inequality of rights, must now meet the scrutiny of the Supreme Court of the United States. That great tribunal has again and again treated the Constitution as applicable to the territories, and therein applied it for the protection of personal rights. Chief Justice Marshall himself has defined the term "United States" to be "the name given to our great republic, which is composed of States and territories."*

The court, in deciding that duties collected in California after its cession to the United States and prior to the establishment therein of a collection district were not illegally exacted, held that: "By the ratification of the treaty, California became a part of the United States"; that commerce "became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imposts and tonnage"; that "the right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts and excises shall be uniform throughout the United States"; that "there was nothing in the condition of California to exempt importers of foreign goods into it from the payment of the same duties which were chargeable in the other ports of the United States"; that "the ratification of the treaty made California a part of the United States, and that as soon as it became so the territory

* *Loughborough vs. Blake*, 5 Wheat., 315, 317.

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became subject to the acts which were in force to regulate foreign commerce with the United States." *

A distinction, often overlooked, lies between personal and political rights. Congress possesses the same general powers, subject to like limitations, over the territories and their inhabitants that it possesses over the States and their inhabitants. In addition to these general powers, it possesses in the territories the same powers, subject to like limitations, over local affairs as the States possess over local affairs. Thus Congress holds in the territories the sum of national and local legislative powers, subject to the limitations of the Constitution.

The Supreme Court, as late as 1884, said:

The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and national; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States.†

The court, in pursuance of this distinction, has held that "the provisions of the Constitution relating to trials by jury for crimes and to criminal processes apply to the territories of the United States";‡ that Congress in legislating for the territories and the District of Columbia, is subject to those fundamental limitations in favor of personal and civil rights which are formulated in the Constitu-

*Cross vs. Harrison, 16 How., 164, 198.

†Murphy vs. Ramsey, 114 U. S., 15.

‡Thompson vs. Utah, 170 U. S., 343, 346; Callan vs. Wilson, 127 U. S., 540.

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tion and its amendments; * and that the United States, upon "acquiring territory by treaty or otherwise, must hold it subject to the Constitution and laws." †

When it is said that Congress has absolute power to legislate respecting the territories of the United States, what is meant, as we have seen, is that Congress holds the sum of national and local legislative powers in respect of such territories. It may do in a territory, in addition to what it may do in a State, what the people of a State acting through their general assembly may do in that State. The Supreme Court has held that the form of government to be established in a territory rests in the discretion of Congress—

acting within the scope of its constitutional authority, and not infringing upon the rights of persons or rights of property of the citizen. . . . The power of Congress over the person or property of a citizen can never be a mere discretionary power under our Constitution and form of government. The powers of government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the territory becomes a part of the United States the federal government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a government and sovereignty. It has no power of any kind beyond it; and it cannot, when it enters a territory of the United States, put off its character, and assume discretionary or

* *Mormon Church vs. United States*, 136 U. S., 1; *McAllister vs. United States*, 141 U. S., 174; *American Publishing Society vs. Fisher*, 166 U. S., 464, 466.

† *Pollard vs. Hagan*, 3 How., 312.

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despotic powers which the Constitution has denied it. It cannot create for itself a new character separated from the citizens of the United States and the duties it owes them under the provisions of the Constitution. The territory being a part of the United States, the government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the federal government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved.

The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate.*

The court, in the same case, says:

A power, therefore, in the general government to obtain and hold colonies and dependent territories, over which they might legislate without restriction, would be inconsistent with its own existence in its present form.†

The attempt, by the terms of the treaty itself, to enlarge the powers of Congress by conferring upon it power to determine "the civil rights and political status of the native inhabitants" of the islands, is without effect. The Supreme Court, in the case of *New Orleans vs. United States*, ‡ says:

The government of the United States is one of limited powers. It can exercise authority over no subjects except those which have been delegated to it. Congress cannot, by legislation, enlarge the federal jurisdiction, nor can it be enlarged by the treaty-making power.

* *Scott vs. Sandford*, 19 How., 393, 449.

† *Id.*, p. 448.

‡ 10 Pet., 662, 736.

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The court, in the case of *Pollard vs. Hagan*,* says:

It cannot be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government.

It may be conceded, for the sake of argument, that Congress may determine the status of the present inhabitants of the ceded islands, but the Fourteenth Amendment fixes the status of all persons born therein after the date of cession. The court, in the recent case of *United States vs. Wong Kim Ark*,† held that American-born Chinamen of alien parentage are citizens of the United States free from the provisions of the exclusion acts and treaties; and that Congress is without power "to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right of citizenship."

Even the question of citizenship does not determine personal and property rights under the Constitution. The Supreme Court, in the late case of *Lem Moon Sing vs. United States*,‡ in passing on the rights of a Chinese alien in the United States, said:

While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country, and such of his property as is here during his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States.

* 3 How., 212, 225. † 169 U. S., 649, 703. ‡ 158 U. S., 538, 547.

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This brief review of the authorities makes it clear that the Supreme Court, in the discharge of its highest function, has steadily interpreted the Constitution in the terms of liberty, giving full effect to its purpose to establish equality of rights for all men in all places within the jurisdiction of the United States.

The proposal, despite such a Constitution so achieved and thus interpreted, to reintroduce into our system the principle of inequality of rights, the assertion of a purpose to make God's liberty a matter of locality instead of personal right, is indeed shocking. Even the assumed interests of trade cannot impart lasting vitality to a purpose whose merits may not be discussed in the presence of free men. We made tremendous sacrifices to destroy the inequality of slavery, to make the ideal of equality declared by the fathers the highest achievement of constitutional liberty. We suffered much that the Union might cease to be divided, that all men within the jurisdiction of the United States, irrespective of race or color, might have equal personal rights. The argument that, having sinned against liberty in our treatment of the negro, we may now betray liberty in the person of the Filipino for a possible commercial profit, is but for the moment, and to cover an awful blunder. The Constitution lives as the supreme law of the land. It does not admit, what ex-President Harrison has justly characterized, "a construction contrary to liberty." It can neither be amended nor long evaded to promote inequality of rights. Nothing short of equality of rights for all men as men in all places within the jurisdiction of the United States can be the purpose of American law.

SHALL THE UNITED STATES HAVE COLONIES?*

Arbitrary governments may have territories and distant possessions because arbitrary governments may rule them by different laws and different systems. . . . We can do no such thing. They must be of us, part of us, or else strangers.—*Daniel Webster*.

THIS topic of course involves the recent acquisition by the United States of an extraordinary assortment of distant islands and alien people. Having acquired these islands and peoples by our recent wars, we must determine upon a course of action in respect to them. Three courses are open to us. First, we may let them go, securing by treaty all proper privileges in return for some measure of protection from outside aggression. Second, we may incorporate them into our body politic, holding them by force in subjection without representation. Third, we may incorporate them into our body politic, conceding to them the inalienable rights of freedom with representation.

Those who would adopt the first course, letting the islands go, believe that their people are not fitted to share with us the privileges and duties of American citizenship; and that, whatever others may do, it is not open to us to deny to men of any race or place equality of personal rights. They who thus believe do not undervalue trade. They do not wish to restrict American influence. They

* Address at the Second National Social and Political Conference at Detroit, Mich., June 29, 1901.

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desire to hold their country true to the course which has exalted her among the nations and made her prosperous beyond compare. They believe that we can secure through treaties, cordially entered into by native governments, all privileges of trade and intercourse with their peoples which we should ask.

Those who would let the islands go hold that, if the natives are incompetent to maintain public order by means of governments of their own choice suited to their conditions, they are unfit for incorporation into our body politic on whatever terms. They who so hold are unwilling to provide place beneath their country's flag for others than citizens. They remember the tremendous sacrifices made by a passing generation to efface the stain of human slavery from the American name. They would not reintroduce inequality of rights into a nation that was "conceived in liberty and dedicated to the proposition that all men are created equal." They would hold America true to the ideals of liberty and human rights which inspired her national life, which constitute her real glory, which form the basis of her most splendid vision.

Those who, with Benjamin Harrison, would "limit the use of the power of territorial expansion to regions that may safely become part of the United States, and to peoples whose American citizenship may be allowed," do not question the power of the American people—whom they distinguish from the American government, their agent—as a nation to do as respects acquired territory what other nations may do. They deny that it is open to a people, organized to secure and maintain self-government for

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themselves and their posterity, to question or deny the right of another people to self-government. They say that a people, who for more than a century have repudiated and denied the doctrine of absolutism, are estopped to assume and exercise absolute power over other peoples. They hold that a crowd acting the role of despot is even less open to reason than is the individual despot. They no more desire to exercise despotic power over others than to be themselves the victims of despotism.

The second course open to us, the incorporation of the island peoples into our body politic to be held in subjection without representation, is but a reversion to the Roman method of nation-making. It involves the reintroduction into our system of the doctrine of inequality. It means the government of millions of men by force. It marks a clear departure from the hitherto consistent course in the pursuit of which we have achieved national greatness and world-wide influence. Until now our every acquisition of territory was made to expand the domain of equal rights, to extend the area of constitutional liberty. Each successive expansion of our territory enlarged a republic of self-governing men. The inhabitants of every such acquisition became citizens, sharing with us the rights of American citizenship.

This natural growth of a self-governing nation has until our time satisfied the aspirations of American statesmanship. Those, who from time to time exercised the authority of the nation, have been content to "limit the use of the power of territorial expansion to regions that might safely become part of the United States, and to peoples whose

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American citizenship might be allowed." Without preliminary discussion and by a course each step of which was declared not to involve the next, we have been committed to what is at last conceded to be a departure from our traditional policy, to what is called a colonial policy. We have by wars of conquest acquired distant territories fully peopled by millions of men not qualified for American citizenship. Our government, which is without inherent powers and is but the expression of the will of a self-governing people, has assumed and to-day exercises despotic power over these unhappy peoples. We have flatly denied to them the inalienable "rights of human nature" for which the Revolution was fought. We have despoiled them of native land and made them mere subjects of a distant republic. We have relegated them to a status of slavery. Benjamin Harrison, referring to them in January last, said: "The man whose protection from wrong rests wholly upon the benevolence of another man or a congress, is a slave—a man without rights." Mr. Justice Harlan, in the *Downes* case, says: "The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces, and the people inhabiting them to enjoy only such rights as Congress chooses to accord to them, is wholly inconsistent with the spirit and genius as well as with the words of the Constitution."

This policy, though within the power of the greatest of republics, is suicidal. John Fiske, in discussing its failure at Rome, says: "The essential vice of the Roman system was that it had been unable to avoid weakening the

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spirit of personal independence and crushing out local self-government among the people to whom it had been applied. It owed its wonderful success to joining liberty with union, but as it went on it found itself compelled gradually to sacrifice liberty to union, strengthening the hands of the central government and enlarging its functions more and more, until by and by the political life of the several parts had so far died away that, under the pressure of attack from without, the union fell to pieces and the whole political system had to be painfully reconstructed."

"The Roman method of nation making lacked the principle of representation. . . . What was needed was the introduction of a fierce spirit of personal liberty and personal self-government."

There is a third course open to us, the incorporation of the island peoples into our body politic with the equal rights of American citizenship. This is the tried American method of nation-making. It is founded on the great principle of representation. Until with professions of humanity on our lips we entered upon wars of conquest, we had not dreamed that a self-governing people might extend its national boundaries by other means. It assumed that governments derive their just powers only from the consent of the governed. It did not prevent national expansion. It limited such expansion to regions and peoples that might safely be admitted into a self-governing nation. The admission of acquired territories as States was only delayed for sufficient population to maintain all the institutions of constitutional liberty. In the meantime the

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personal rights of American citizenship were protected by the Constitution and everywhere respected. In the words of the Supreme Court, in a case decided in 1895, even aliens were "*entitled to the benefit of the guaranties of life, liberty, and property, secured by the constitution to all persons, of whatever race, within the jurisdiction of the United States.*"* With the close of the Civil War the ideal that rights pertain to man, not to race or place, became the law of the land. Thus was removed the gulf which was so long fixed between our faith and our practice. Thus was won the noblest triumph of liberty.

Why is it proposed to depart from a course so long and so successfully pursued? Why reverse the movement for an equality that was the ideal of the Declaration and the achievement of the amended Constitution? Why substitute inequality for equality? Why again divide a Union for which such tremendous sacrifices were made that it might cease to be divided? Why transform "a republic, founded on the Declaration of Independence, guided by the counsels of Washington, into a vulgar, commonplace empire, founded upon physical force?"

The answers, thus far vouchsafed to us, are such as these: "Where the flag is up, it must stay up." "The Philippines are ours forever." "Into our reluctant lap the hand of destiny dropped the Philippines." "The Philippines, like Cuba and Porto Rico, were entrusted to our hands by the Providence of God." By treaty "Spain cedes to the United States the archipelago known as the Philippine Islands." We must "do our part in the re-

* *Lem Moon Sing vs. United States*, 158, U. S. 538, 547.

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generation of the world" regardless of "outgrown" ideals. "Beyond the Philippines China!" "Behold the exhaustless markets they command!" Annexation, assumed to have been necessary or desirable, is even alleged in the prevailing opinion of the Supreme Court of the United States as sufficient reason for "large concessions" in the interpretation of the Constitution itself.

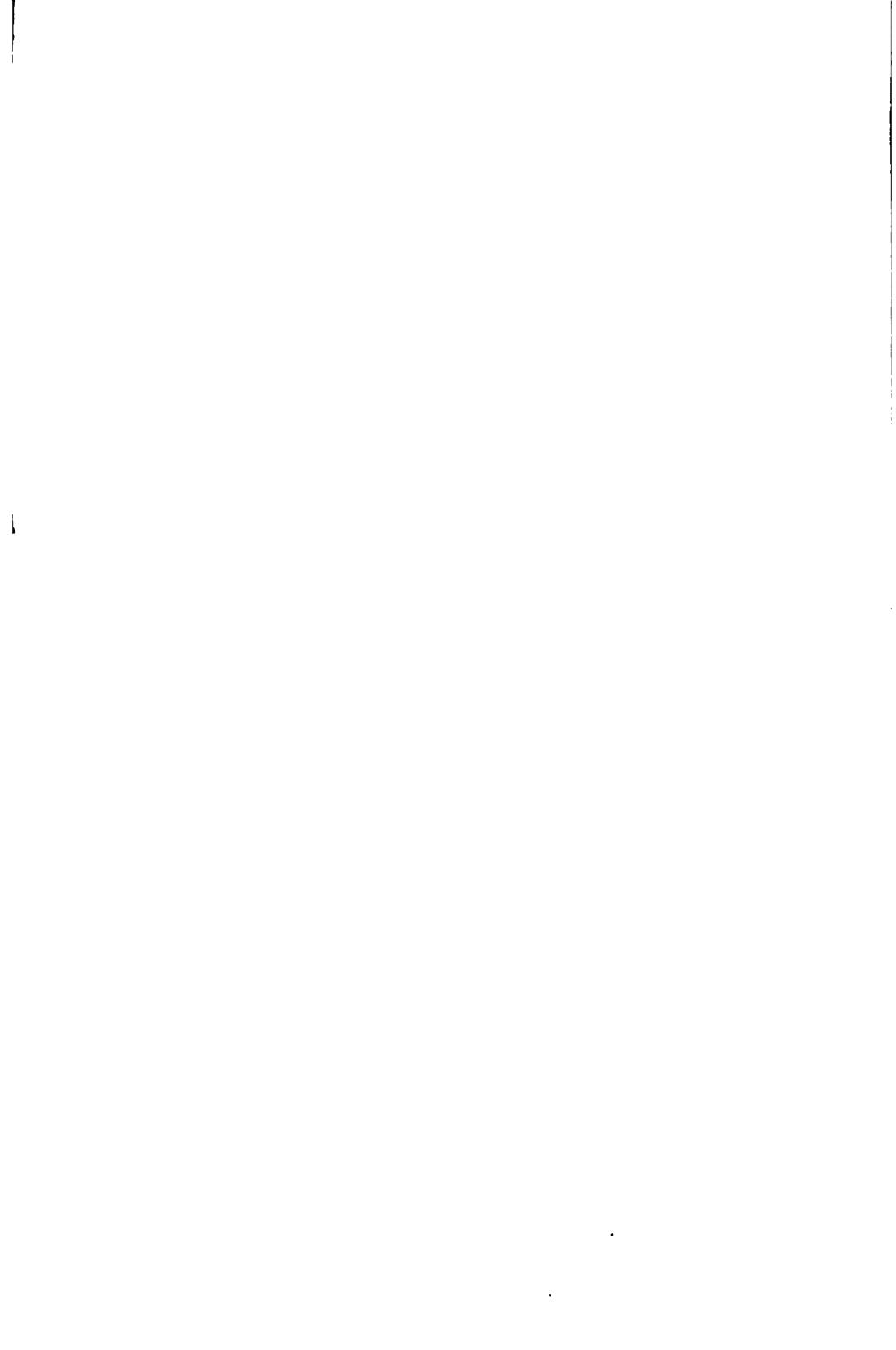
That the islanders are not qualified for American citizenship is everywhere acknowledged. Indeed, their alleged unfitness for self-government is the excuse for making them subjects of a self-governing people. Because "they are not of a self-governing race" we may incorporate them into our body politic without representation. In order to hold lands and peoples that are alleged to be unfit for freedom, we have already created one of the costliest of naval and military establishments. That we, like England, may have colonies, we have returned to militarism with its grievous burdens and sordid ideals. That we may join with the "predatory nations" in the partition of the world, those who temporarily exercise our authority are striking at the vitals of free government.

The conceded unfitness of the islanders for American citizenship would seem to indicate that we should let them go. On the contrary, it is made the conclusive reason for their incorporation into our body politic without rights. We made tremendous sacrifices in the Civil War that the Union might not remain half slave and half free. We now of deliberate choice, without any real necessity or a proper motive, sow the seeds of a new slavery within the republic.

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Those, who still cherish the principles of the Declaration of Independence and desire that they shall continue the basis of our national life, would let the sovereignty of the islands pass to the natives who, like the Cubans, "are of right free and independent." Whether we should have acquired Porto Rico and the Philippines, it is now too late to discuss. If we are to remain a free people, it can never be too late to believe and proclaim that the United States ought not to acquire or hold any territory anywhere that may not be governed by American methods.

MISCELLANEOUS PAPERS



THE CLERGYMAN AS A PUBLIC LEADER*

THIS great institution is rich in voices far better than mine to discuss the themes which mainly engage your attention during these years of preparation. But our friend, Dr. Fisk, with a largeness and freshness of view which is to him the fountain of perpetual youth, and to this institution the well-spring of a noble success and a nobler promise, sees that in our time the ministry is called to a wider as well as higher service than ever before, and that you need at least some glimpses of the world in which and for which your work is to be done, from points of view other than that of your own profession. He has therefore invited me to give you one such glimpse from the point of view of legal training and experience, affected somewhat by an active interest in all that makes for righteousness and public order.

De Tocqueville, in his "Democracy in America," says: "The government of democracy is favorable to the political power of lawyers; for when the wealthy, the noble, and the prince are excluded from the government, they are sure to occupy the highest stations in their own right, as it were, since they are the only men of information and sagacity, who can be the object of the popular choice. . . . I cannot believe that a republic could subsist at the present time if the influence of lawyers in public busi-

* An address given before the students of the Chicago Theological Seminary in the Winter of 1894-95.

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ness did not increase in proportion to the power of the people." Professor Bryce, in his later and profounder study of the American Commonwealth, says: "The bar has usually been very powerful in America, not only as being the only class of educated men who are at once men of affairs and skilled speakers, but also because there has been no nobility or territorial aristocracy to overshadow it. Politics have been largely in its hands, and must remain so as long as political questions continue to be involved in the interpretation of constitutions."

Of the church, Professor Bryce says: "It is an assemblage of men who are united by their devotion to an unseen Being, their memory of a past divine life, their belief in the possibility of imitating that life, so far as human frailty allows, their hopes for an illimitable future. Compulsion of every kind is contrary to the nature of such a body, which lives by love and reverence, not by law. It desires no State help, feeling that its strength comes from above, and that its kingdom is not of this world."

I quote these passages to bring to your attention two great forces which have thus far led in the development of American institutions. Their united influence has been at once so conservative and so progressive, that the American people are to-day recognized as one of the most conservative and progressive of peoples. Professor Bryce says of us: "They are conservative in their fundamental beliefs, in the structure of their governments, in their social and domestic usages. They are like a tree whose pendulous shoots quiver and rustle with the lightest breeze, while its

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roots enfold the rock with a grasp which storms cannot loosen."

The American lawyer, having drunk deep at the springs of modern liberty, has at once developed and conserved our political and legal institutions. Upon broad and secure foundations he has erected a legal structure which in the main admirably regulates the relations of men to their governments and to each other. To him is largely due the preservation in our institutions of the rich results of the struggle of the ages for human freedom. The American clergyman, on the other hand, having everywhere assisted, and in places led, in laying the foundations of free government in America, has since led in all the great philanthropic movements that have placed this country in the lead in all works of active beneficence. He has planted churches and schools in every hamlet and reared colleges and universities in every commonwealth. Everywhere preaching that the things which are eternal are unseen, he has made religion and conscience a constantly active force in America, not indeed sufficient always and in all places to avert every moral ill, but generally inspiring the leaders of public action with a moral courage to hold such evils at bay until the people could be aroused to their destruction. He has held aloft high ideals of individual life and character and made the Christian standard the universal ethical standard of his country.

Thus we see that the lawyer has led in the development of free institutions in America, while the clergyman has held aloft the ideals which have given free men that rev-

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erence and self-control which alone fit them to live under such institutions. If such has been the influence of these leaders thus far in our history, to what further services are they called? It is true, as Dean Stanley has said, that ours "is a land that still breathes the freshness of its first beginnings," and that our history is fresh and definite to a degree unknown elsewhere; but it is also true that the conquest of the new world has so far proceeded, the furnishing it with institutions is so far completed, that the period of organization may be considered closed. The time has, however, not yet come, nay, can never come, when those who have thus far led can rest from their labors. It is a narrow view that regards the lawyer as merely a policeman, whose services are less necessary as men advance in morals and civilization. The law and the lawyer have to deal with the complex relations of men, and their importance to organized society increases with its growing complexity. The policeman may possibly sometime be spared, but a highly organized society cannot be conceived without institutions and laws to define rights and prescribe duties. To conserve, interpret, and enforce these will remain the function of the lawyer. To hold aloft Christian ideals and cause them more and more to prevail and control in the affairs, as well as in the individual lives of men, will remain the noble function of the clergyman. But this only states in the most general terms the service that society has the right to demand of its professional leaders.

Let us examine somewhat in detail the present opportunities and duties of the clergyman to serve the society in which he is a leader. And first, permit me to observe that

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heretofore the clergyman has mainly sought to seek out and save individual souls as brands from the burning. In our day, without losing his deep sense of the value of the individual life, he is beginning to recognize a call to save society itself as the only means of saving all men. He has sought to save society by trying to save its individual members. He now seeks to regenerate society in order to save all who compose it. The end remains the same. The means to that end are becoming more scientific and inclusive.

We have in purely political relations held the ideal of the equality of men, and have imperfectly realized it in practice. Of their real equality and mutual dependence we are only beginning to dream. We have talked of the brotherhood of men. Of what it means in a thoroughly Christian society we have yet but a faint conception. Instead of making most of what is universal in man, we have dwelt upon what is exceptional and individual. We have regarded mere incidents of birth, education, and position of greater importance than what is fundamental in human nature. We measure men by what they have, where and how they live, what positions they occupy, rather than by what they are. We recognize as success only external acquisitions and position. We count ourselves honored if we attract the slightest attention from the weary man of large interests or high position, while we neglect what might be the precious companionship of the neighbor, who yearning for sympathy and the touch of a friendly hand, is ready to give us for the taking all that is best in human friendship. We give our dinners to those

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who are surfeited with better dinners at home. We seek the society of those who do not need us and neglect those who do. We sometimes contribute money to send the gospel to those whom we regard as unfortunate, which we hope will prepare them for the next world, possibly even for fellowship *there* with such privileged beings as ourselves. We do not seek to know them here, and shall need an introduction if we shall be so fortunate as to meet them there.

It is one of the most hopeful signs of our times that the more fortunate are learning that there is an equality in human nature itself deeper and more profoundly significant than the political equality of the Declaration of Independence. The institutional church in certain communities, the Young Men's Christian Association everywhere, the societies for city evangelization, and the economic and other conferences of representatives of all elements of society all testify of a growing sense of fellowship and mutual dependence. But the changing attitude of the fortunate to those who are less so is just now nowhere so well expressed as by the social settlement. As a point of contact, a place where the reorganization of society may begin, it is already of great value. As a means of changing the point of view and consequent methods of those who would aid the less fortunate, and as an educational influence as to the necessity of social organization throughout the entire community, it promises to be of still greater value. We may even anticipate a time when each Christian home will be a social settlement to its immediate neighbors. Isolation and lack of the human sympathy

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which stimulates and sustains are by no means confined in our cities to the homes of the poor.

In the great work or regenerating society itself. to create the conditions that shall be most favorable for the salvation of all men, the Christian minister is the natural leader. It is for him to determine how fast it shall proceed, and upon his success rests the solution of many of the pressing social and political problems of our day.

In his place of leadership the clergyman now needs strongly to guard himself against sentimentalism and even socialism and anarchy. He should set his face as a flint against the lawless spirit of our age. We hear much of late of "Christian socialists" and their schemes of social revolution, but no two of them have yet agreed upon a programme for the reorganization of society. Bishop Potter, in his recent notable address, while asserting the clergyman's duty to condemn unjust combinations of employers and the tyranny of capital, says: "But it is a very different thing when the pulpit or the religious teacher, passing on from his own province of rebuking things that are evil, becomes the advocate and defender of a new social philosophy which perilously misconceives the problem of which it proposes the solution. . . . The religion of Jesus Christ is here in the world to mitigate the hardships which arise out of the seemingly inexorable operation of the laws of nature, whether they are laws of trade, or of disease, or of death." Commenting on this, "The Churchman" says: "The ministers of religion are justly held responsible for a very large amount of the social discontent and disorder which is the most dangerous

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characteristic of modern life. . . . It is painfully evident that ministers of religion, in pulpit and on platform, have again and again proclaimed the barest socialism and even anarchism. They have declared that the existing order of society is unrighteous, tyrannical, contrary to the law of God and the rights of man. Such a state of society evidently ought to be put down; and such teaching is the public justification of confiscation and revolution."

These words are severe, but they are widely believed to be justified by the recent teaching of not a few pulpits of more denominations than one. Of course it is not here claimed that clergymen are the only offenders against public order. Last July in this city public officials, as well as two leading clergymen, conferred, apparently on terms of mutual respect, with men then actively engaged in the act of violating the criminal laws both of the State and Nation. These conferences were held for the purpose of securing the arbitration of a crime, the most gigantic criminal conspiracy of our times. At least two governors of distant States telegraphed the leading conspirators for "permission" to run trains in their own territory, and within the jurisdiction of their own laws. Emboldened by the attention received from so many of the representatives of society the leaders of the conspiracy even presumed to open a public discussion of its subject-matter with the President of the United States. He had the moral fibre to hold no communication with men while engaged in violating the criminal laws of the land, except through the courts, and to direct the military forces at his command to suppress their treasonable insurrection.

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The general economic training of our generation has been vicious in the extreme. We have sown the wind and are now reaping the whirlwind. For a generation our people have been taught that it is the province of government to provide work for all those who labor with their hands, for such hours as they choose, at such wages as they want. Many now act upon the theory that it is the duty of the government to support the people, and not the duty of the people to support the government. By special legislation we have made many employers of labor enormously rich, assuming that they will out of the goodness of their hearts divide with their employees. A paternal government has created a privileged class through whose benevolence to confer largesses upon the people. Laboring men have especially been taught to look upon corporations as possessed of bottomless treasuries from which to pay high and continuous wages without reference to income or the condition of business. The doctrine is widely held that men who have been paid in full the wages agreed upon for services rendered have also an indefinite vested interest in the business and property of their employers, which can at any time be easily determined and enforced by the panacea of arbitration. In connection with the late strike it has been widely insisted that a corporation already running at a loss is under some obligation determinable and enforceable by arbitration to raise wages and continue business in times of great depression merely because it has made money in the past and is yet able to conduct a distinct part of its business at a profit. Special favorites of the laws, constituting a dangerous privileged

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class, use funds placed in their hands by a paternal government to pay paternal and benevolent wages, to purchase elections and debauch legislation and administration. Trade unions, often encouraged by public sentiment, claim the right to say who shall work, upon what conditions, and at what wages. When necessary to enforce their demands they claim the right to destroy life and property with impunity. They have pressed their wages so high in industrial centers as to invite disastrous competition by workers from smaller places. They have imposed such intolerable conditions upon many employers that capital is more and more seeking investment in channels employing the least possible labor. Paternalism in government has led organized labor to create an arbitrary power within the State, far more absolute in its control of vast numbers than the law of the land itself. It largely ignores all duly constituted authority and resents the interference of the courts as tyranny.

These conditions are not due to our system of government, but to vicious teaching and false leadership. The crying need of our day is for public leaders who believe and boldly teach that two wrongs do not make a right, that a free country has no place for privileged classes, whether created by legislation or trades-unionism, and that life and opportunity and property must be preserved inviolate against all comers.

There are laws affecting the relations of men in society and the production and distribution of the necessities of life, which are as natural and inexorable as the law of gravitation itself. Providence, having established these

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laws, does not relieve from the penalties provided for their violation. Yet a mushy and thoughtless sentimentalism of our time seeks to improve upon Providence. We regard what a man wants, rather than what he earns, as the measure of his deserts. He may receive from three to five dollars per day for labor requiring only slight skill, but if he complains that he is the slave of capital because his hours are longer than he likes, or his employer declines to yield to every outrageous demand of his union, we at once extend our sympathy and assume that a great question between capital and labor is raised. There are open questions between labor and capital which demand settlement, but these questions cover a smaller field than is generally assumed. The relation is a necessary one, and is already in most respects regulated by positive laws which are at once in accord with the fundamental conditions of free government and the principles of justice. No man is a slave merely because he works for another. In a highly organized society like ours, we all in some form work for others under the obligations of free contract. Our wages, fees or profits depend upon meeting these obligations.

Further, the assumption that labor is the only factor in production and that the laborer is wronged by his failure to secure the whole product, is the basis of much vicious teaching. Mr. Mallock, in his recent work, "Labor and the Popular Welfare," discards the word "capital" as misleading and substitutes the term "ability" therefor. He makes all production the result of "human exertion" and divides this into "labor" and "ability." Labor is manual labor, and all other exertion is ability. Labor is a kind of

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exertion which begins and ends with each separate task upon which it is employed, while ability is a kind of exertion which is capable of affecting simultaneously the labor of an indefinite number of individuals. He illustrates his meaning by the failure of Watt to train up individual workmen able to make cylinders true enough to keep the pistons steam-tight. "Henry Maudslay, by introducing the slide rest, did at a single stroke for all the mechanics in the country what Watt, after years of effort, was unable to do for any of them. The power of one man thus descended upon a thousand workshops, and sat upon each of the laborers like the fire of an industrial Pentecost." Ability includes the inventor and the man who applies the invention to practical use. It is the man who knows how to produce, what to produce and where to find a market. It is this rare power of calculation, called by Mr. Mallock *ability*, which within this century has increased the annual production of the population of England from \$70 to \$175 *per capita*, although the population has increased from ten to thirty-five millions since the beginning of the century. This enormous increase in population and income has involved an incalculable amount of inventing, organizing, administering, head-work, leadership. No socialistic scheme sufficiently takes into account this vital factor, or offers it any sufficient inducement. Only fame and fortune have proven sufficient to lead men to make the extraordinary exertions necessary to such achievements. The growth of the present social organization has been marked by the great achievements of the race. We do not need a reorganization of society. We

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do need the removal of all abuses which make men of power special favorites of the laws, and place unjust and unnecessary burdens upon the humbler members of society. We cannot create conditions under which all men shall be equal in achievement, but we may create conditions under which they shall be equal in opportunity.

The clergyman may very properly deal with the great questions of human society; but he should realize that its present organization is based on institutions and laws that are an evolution of all time, and that he who seeks to improve the relations of men in society must understand and act with respect to existing conditions. Many would-be reformers sally forth to adjust the relations of capital and labor, to destroy intemperance and crime, and even to reorganize society itself, in blissful ignorance of existing institutions, and all unconscious that human society is a growth and not a manufacture. We respect them much as we respect Don Quixote, for their innocence and seriousness of purpose. Their ideas of government and law are about as definite and practical as those taught to Sancho Panza to prepare him for the government of his island.

No one for a moment claims that the present organization of society is perfect, or even free from defects which cry out for speedy remedy. But this organization is the product of a long and wide evolution. It embodies the human experience of the ages. It so distributes the products of industry that all share in them, if not always equitably. It provides conditions under which men may be reasonably free, and it promotes independent conduct and character. I claim that many of the natural leaders of

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society, in the pulpit and elsewhere, would be far better fitted to remedy existing defects if they knew more of the institutions and laws which they seek to reform.

I especially recommend to students such books as Von Holst's "Constitutional History of the United States," Cooley's "Constitutional Limitations," Bryce's "American Commonwealth" and Mallock's "Labor and the Popular Welfare," and such articles as Cooley's discussion of the recent railway strike in the September "Forum." We all read too much periodical literature and too few great books. The newspaper and the monthly magazine, if too much relied upon, destroy the sense of proportion and the true perspective. The discontent of our times is great, but in a larger view it is not nearly so great as the content of the vast multitudes of plain people who are represented neither by the flippant newspapers of the day, nor by the noisy labor agitators of the larger cities. The trained lawyer who has traced the growth of institutions and knows the real forces of organized society turns from these noisy voices and says with Longfellow in the presence of the abiding work of Dante:

"The tumult of the time disconsolate
To inarticulate murmurs dies away,
While the eternal ages watch and wait."

Yea, the eternal ages watch over what man, under Providence, has already achieved, and but little disturbed by "the tumult of the time disconsolate," wait the fulfillment of a larger promise.

The minister as a public leader should be loyal to great causes rather than to a political party. It is the nature of

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partisanship to regard party as an end, and to make any sacrifice of moral principle to maintain its ascendancy. The partisan profoundly distrusts the motives or capacity of those who do not think and act with him. He has really little faith in free institutions, because he believes that good government depends upon the continued supremacy of a single party which contains perhaps less than half of the people. No measure of reform that his party does not champion can have his support, for even its temporary defeat cannot be risked to wander after what seem to him strange gods. He may not altogether like the leadership of his party, the desperate and even criminal means by which its victories are won; he may be even half conscious that it no longer stands for the purposes for which it was organized, but as it continues to fly the old banner and make constant references to the old leaders, it commands his unwavering support. This is not the attitude for a trained man to occupy in relation to public affairs. He should have such knowledge and experience of the American people as will enable him to act upon the fundamental truth that his country and its institutions are safe in the hands of any majority of its citizens of whatever party name. This is the fundamental condition of republican institutions. Without it there can be no success that is not merely temporary. Without faith in it, no citizen can have his proper influence in public matters. With such faith, parties are to him but means to accomplish this or that result, and principle is the motive to political action.

The minister then of all men should not be a partisan. His political action should have certain ends in view, and

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his political influence should tend to promote those ends rather than mere party success. The man who advocates a cause in which he profoundly believes commands the respect of even those who do not value his cause, or think him mistaken in the means which he has chosen to promote it. The minister who cares more for temperance than for party will cheerfully coöperate with any man or party that is at the time doing something to promote temperance reform. If he believes that the present use of the civil service by both parties as personal and party plunder does not differ in principle from looting the treasury, that it makes of many of our party contests mere scrambles for office instead of conflicts of principles, he will earnestly advocate civil service reform, criticising all offenders, and hail with joy every step towards reform by whatever party taken. It is only the partisan who values no step in advance unless taken by his own party, and who constantly offends the intelligence of others by claiming that his party contains all the loyalty, intelligence, and virtue of the country.

The attitude of the minister toward political parties should, therefore, be independent. His relation to the great public questions which one by one come up for political action need not be neutral, if his interest is plainly for the cause rather than for the party that for the moment is its champion. Henry Ward Beecher's splendid services in the cause of human liberty did not diminish his influence as a Christian minister, while they powerfully contributed to the welfare of his country. When we think of his relation to public affairs we think of the great causes which

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his powerful support promoted, rather than of the parties with which he from time to time acted. Contrast his attitude toward parties and his political influence with that of the great Brooklyn preacher, who in a recent national campaign, finding himself out of harmony with the leadership of his party and the attitude of that party to the questions of the time, at first, in his own phrase, "took to the woods," and then returned to his party support because of old associations and because it seemed to him to contain in its rank and file more good people than the opposition. A political party is not a social organization. Its leaders, their characters and aims at any given time, are more important than the character of its membership. If on the issue of the hour a party is on the right side, one may act with it without thereby indicating approval of the character of all its members, or even of all of its past history. The great mass of the voters in all parties are at heart good citizens. If it were not so, free government would still remain but a dream. No political party has ever continuously based its action on a political creed of such importance as to command the steady support of thoughtful and independent men. One cannot safely join a party as he does the church, for life. Controlling issues in public affairs usually come up for settlement one at a time. One party is on the right side of one question; another party has the better side of the next issue that commands public attention. The independent man, who cares more for causes than for parties, with faith in the good intentions of all parties, uses one party to accomplish one end and some other party to accomplish another. If there were not

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many men who acted on this fundamental condition of free institutions their days would soon be numbered. This attitude should characterize all thoughtful men, and especially the Christian ministry, a body of men whose culture is probably higher than that of any other equal body in America to-day.

Thoughtful laymen have some reason to feel that the political action of many Christian ministers is too much characterized by sentiment or indifference. This complaint should perhaps extend to many other active Christian men, who are doing more to cure than to prevent moral disease. In these days when a gospel of mercy and love, of forgiveness and probation, is so much preached, while obedience and punishment have come to be regarded as harsh and cruel, it may be we should expect only tolerant judgments and prompt forgiveness of political and social offenders. There are yet some old-fashioned moralists, however, who were shocked when a late president *pro tem.* of the United States Senate sneered at what he termed Sunday School politics and announced that the Decalogue has no application to politics. There are still those who do not regard the application of moral principles to political life and methods as an "iridescent dream." There are yet some who believe that a man who has once betrayed a public trust should never have the opportunity to betray another.

Without charging that Christian ministers intend to ignore political offences against good morals, it may be asserted that their influence in public affairs in this vital matter would be far greater, if they showed less indifference to moral offences in political methods and among

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party leaders, or a less forgiving spirit toward those who have betrayed public trusts. If political leaders had a proper fear of the influence of the moral leaders of society, it may well be doubted whether a proven embezzler of public funds would have recently been chairman of the national committee of a great party, or whether the other great party would have kept at the head of its national committee a few years earlier a man who was known to have been a briber of voters. If Christian ministers all over the land had been quick to call things by their right names, it may also be doubted whether our national elections would have ever become a more or less open contest in close States between the managers of the two great parties to see which can buy the larger number of corrupt votes. And if those who occupy public places could not count upon the indifference of the moral forces of society, it is also doubtful whether at the close of a recent national contest a Presbyterian elder would have appointed a Sunday school superintendent to a cabinet office for no known reason except that he had raised in the closing hours of the struggle a vast campaign fund for the purchase of votes. All these things should be condemned by Christian ministers, not to injure a party—if done when called for probably both parties will be about equally affected,—but because they are wrong, highly dangerous to the country, and of immense weight in lowering the moral standards to which all conduct, public and private, conforms. It is not here claimed that ministers show greater indifference than others to these conditions, but as leaders of moral thought they should take the lead in condemning immoral methods in public

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places, and in demanding that the same standards shall apply in their conduct that upright men apply in their personal and business relations.

It is highly important that all public leaders should have accurate knowledge of our complicated system of government, so that when evils exist the right remedies may be sought. The last few years have witnessed many appeals by most excellent men to the national government to remedy evils wholly within the jurisdiction of the States. The effect is to introduce issues into national politics which have no place there, to the exclusion of other questions that should be brought forward. It has also caused an immense loss of power which should have been brought to bear on the people and the local governments where abuses have existed. The same may be said of the conduct of municipal matters. We are only just beginning to realize in America that a municipality is merely a business corporation, and that it is as absurd to talk of the city of Chicago having gone Democratic or Republican as it would be to speak of the annual meeting of the stockholders of the Pennsylvania Railroad Company having been carried by the Republicans or the Democrats. It is the duty of all good citizens, and especially of those who lead public thought, to do all that is possible to divorce municipal from national politics. The complete reform of the civil service is in this reform, as in many others, a preliminary and necessary step.

Finally, the Christian ministry should be thoroughly familiar with political movements and exert an active, even if quiet, influence in favor of political causes. All minis-

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ters are not called upon to do what Dr. Parkhurst has so nobly done. Indifferent to the great causes which politics affect, no live minister can ever be. Any political activity may bring him in contact with much that is unpleasant, and the unreasonable demands of his parishioners may give him annoyance, but these things should be regarded by him as part of the cost of personal liberty. Henry Ward Beecher, in speaking on this subject, refers to the withdrawal of those of superior endowments from political duties as distributive treason, and adds: "When this long procession of selfish men—the rich man, in his self-indulgence; the artist, in his daintiness; the scholar, in his literature; the fashionable and the indolent, in their glittering selfishness—are seen moving away from politics, it will only need a robed and recreant clergyman at their head to form a band of infamy, trampling under foot the very life of their country."

It is neither the noisy demagogue, nor the excited editor, but the American scholar who leads our civilization onward. The elections may go against him to-day, but he will declare the policy of his country to-morrow. Standing in the midst of our busy and material life, the type of manhood that American democracy submits to the world as its justification, he vindicates the vital truth that the things which are unseen are eternal.

Such should be every minister of religion among us—calm, patient, confident, heroic, an example to all men of duty fearlessly performed, a leader whose influence steadily makes for public order and national righteousness.

TIMOTHY SMITH, PIONEER *

A CERTAIN hill town situated near Litchfield, Connecticut, was at the close of the Revolutionary War typical of many New England communities of that day. But sparsely settled, the place retained much of its primeval beauty. The native forest of beech, chestnut, elm, oak, and maple, only here and there encroached upon by the clearings of the settlers, was still the charm of its landscapes. The Congregational meeting-house, a store, a blacksmith shop, a tavern, and a few unpretentious dwellings formed the village that was the centre of the community life. The meeting-house was the real seat of local authority as well as the means of grace to a devout people. Next in importance as a unifying agency was the tavern. No lodge or union had yet arisen to question the good cheer which was there dispensed. The town was yet all but independent of the outside world.

Timothy Smith was born into this primitive community on September 5, 1782. He was the second of twelve children, Martin, Timothy, Irene, Sarah, Daniel, Elijah, Elisha, Abraham, Hannah, Russell, Moses, and Aaron. The twelfth child was named for his father, upon a well-founded impression that the homestead of but seventy acres was sufficiently encumbered, and to perpetuate the name of the father, who was a soldier in the Revolutionary

* Read before the Chicago Literary Club, January 23, 1899. Timothy Smith was the grandfather of Edwin Burritt Smith.

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War. The ancestry of the family, about which its members concerned themselves little, their love for what was old being sufficiently satisfied by familiarity with the times of the Prophets, dated back to the earliest settlement of New England. Timothy was of the fifth generation of his mother's family in Connecticut. The ancestors of his mother, Lucretia Hall, were among the founders of Middletown. Almost every family of the town, as of Connecticut itself, was of equally pure New England blood; for after the great Puritan exodus to America between 1620 and 1640, due to the aspirations of James and Charles for absolute power, there was but little immigration. This gave time for that slow but most valuable political training which has given character and persistence to the Puritan influence in America.

It is hard at this distance of time to realize the conditions of Timothy Smith's early years. Jabez Holbrook, the town minister, still spoke the voice of God to his little wilderness theocracy. Holbrook was at once the vicegerent of Heaven, the apostle of public order, and the representative of culture to his isolated flock. He was an iron man of an iron age. In the midst of rude social conditions he administered such consolations as pertained to the strictly orthodox theology of his day. Under his sway Church and State were firmly united. The town meeting was the means by which the Congregational order exercised temporal authority and regulated the affairs of the meeting-house.

It was in the early years of the reign of Jabez Holbrook, some forty years earlier, that the town meeting

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voted that "Josiah Morris should look after ye boys, on the Sabbath day, to keep them from playing; and for encouragement the town shall allow him ten shillings; further he is to give an account of ye young men that are disorderly." Another year Jeremiah Wittlesay was "chosen to take the oversight of ye youth that sit below; and Moses Butler to have oversight of ye youth that sit in the gallery; these persons to have such care and oversight for one year or more, to endeavor the keeping of ye youth in good order; and that they take especial care that ye said youth sanctify the Sabbath day to keep it holy, and that they make no disturbance in the time of ye public worship." This vote imposed no small task as "ye public worship" occupied much of the day. At about the same time it was solemnly voted, in respect to certain local notables, "that Hezekiah Pratt shall sett in ye fore seat in ye meeting-house, and that Capt. Hall, Senr., shall sett in the Deacons' seat, and Capt. Hall, Junr., to sett in ye first pue, and Capt. Doolittle to sett in ye second pue." Thus was provision made for the weighty affairs of a united Church and State.

The stern preaching of the minister, the real if formal piety of the elders, and the official means employed to cause the young to "sanctifie" the Sabbath, though effective, failed to lead all the boys of the town into paths of rectitude. Indeed, a funeral sermon of the time by Jabez Holbrook discloses a terrible example of depravity and rapid progress in sin. Here is his unflinching portrayal: "Untutored and unrestrained by parental government Peter Stevens grew up at random. In the morning of life, no

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morality was inculcated in him, and no sense of religion, either by precept or example. On the contrary, he was from early years unprincipled, profane, and impious. Before he was nine years old he was expert in cursing and swearing and an adept in mischief. At eleven years he began to pilfer. At thirteen he stole money. At fifteen he entertained thoughts of murder, and rapidly waxed harder and bolder in wickedness. At nineteen he actually murdered a family in cold blood."

Over against this we may place one of the minister's epitaphs, which with like fidelity portrays a character:

In memory of Samuel Hall, Esq., a gentleman of public education and distinguished abilities, who long served his generation as a physician and minister of justice to great acceptance, and in his life and death was an example of sobriety and virtue, and evidenced the influences and consolations of Religion; lived much esteemed and died universally lamented, ye 6th day of April, A. D. 1781.

The great, the good, the wise, the just,
Must all in time be turned to dust;
Then learn to quit terrestrial ties,
That you may soar above the skies,
And then enjoy the blissful favor
Of Jesus Christ, our Lord and Saviour.

The Smith family so increased in numbers that Timothy when eight years of age was "put out to be raised" to a childless couple living on a farm some miles away. This early removal from home was to be permanent. The undertaking of David and Mary Tucker to "raise" the boy was strictly carried out. The Tuckers were devout, well-meaning people. They wanted a boy to "do chores"

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and in time make a full hand on the farm. It was not their idea to minister unto the boy. They would be ministered unto by him. The loneliness, the harsh discipline, and the hard work made the boy long to return to his father's house. For a while he often sobbed himself to sleep under the rafters of the log house that for thirteen years was to be his home. The Tuckers were not unkind; they deemed it best for the boy to be strict with him. Then, too, in their practical view, it was good both for him and them that he early learn the value of hard and well-nigh constant work for its own sake. Indeed, then as now, work was a virtue of special value on a farm.

Timothy was sent to school a few weeks in each year until he was twelve years old, and thus learned to read and write and to "cipher" a little. What was to be of greater value to him, while a boy he learned to drive oxen and care for stock, to chop and clear, to sow and reap, to make sleds and ox yokes, to split rails and build fences,—in a word, to be a pioneer farmer qualified to share the rough work of his generation. Being a boy under such conditions was a task that was neither light nor agreeable. On one occasion when sent in the twilight of a Sunday night to bring a pair of shoes from the neighboring cobbler he was punished on his return for whistling, although the offence for which he vicariously suffered was that of another boy.

The years are not longer when a boy is bound out; they only seem longer. They finally passed in Timothy's case. The contract was up at his majority. On the very day when he became of age he was given the stipulated

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sum of one hundred dollars and a new suit of homespun clothes. The relation between him and the Tuckers had been from the first strictly one of contract. Upon its faithful discharge by the parties of both parts all sense of obligation on the part of each to the other ceased. Timothy Smith was now his own master. He was free to seek his fortune wherever his inclination might lead. His relations with his own family had long since ceased to be intimate. Neither they nor the Tuckers assumed to have any claim upon him, much less a right to suggest his course.

The twenty years since the Treaty of Paris had witnessed great changes in America. At the close of the War the thirteen original States were intensely provincial in character. Not only each of them, but every community within their borders was well-nigh a law unto itself. The means of transportation were of the poorest. There were a few stage-coaches and some wagons, but travel was generally on horseback. Every community was self-centred and jealous of its privileges. Indeed, the region along the Atlantic seaboard might almost be described as a land occupied by a host of independent and self-governing village communities. The general assemblies of the several States exercised some authority, but executive power was held in suspicion and strictly curbed. The shadowy authority of Congress became less real as immediate danger from without disappeared. The country of each man was his own town, or at most his own State. The only bonds of union were memories of common sacrifices and achievements in the French and Revolutionary Wars, the friend-

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ships and influence of those who had coöperated in those memorable struggles, and the then new ownership in common of the imperial domain known as the Northwest Territory.

Prior to the French and Indian War the colonists, occupied with the settlement of the Atlantic seaboard and held in check by the forest and the Indian, had scarcely climbed to the top of the Alleghanies to gaze upon the noble heritage awaiting them beyond. The struggle between the French and English for supremacy on this continent led Washington and Boquet to cut roads from Eastern Virginia and Pennsylvania to the Ohio, and caused the soldiers of New York and New England to find a way by river and portage from Albany to Lake Ontario at Oswego. But, at the close of the war and for many years afterwards, an almost impenetrable forest lay over the mountains and far to the westward.

John Muir beautifully says that "the forests of America, however slighted by man, must have been a great delight to God: for they were the best He ever planted. . . . Wide-branching oak and elm in endless variety, walnut and maple, chestnut and beech, ilex and locust, touching limb to limb, spread a leafy translucent canopy along the coast of the Atlantic over the wrinkled folds and ridges of the Alleghanies—a green billowy sea in Summer, golden and purple in Autumn, pearly gray like a steadfast frozen mist of interlacing branches and sprays in leafless, restful Winter." In the like beautiful words of Francis Parkman, "One vast, continuous forest shadowed the fertile soil, covering the land as the grass covers

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a garden lawn, sweeping over hill and hollow in endless undulation, burying mountains in verdure, and mantling brooks and rivers from the light of day."

The final struggle with the French, Pontiac's conspiracy, the conquests of George Rogers Clark and others during the Revolutionary War, the acquisition of the territory beyond the mountains westward to the Mississippi, and the formation of the more perfect union of the Constitution led to the mighty migration which was to overcome the forest and sweep across and occupy a continent within a single century. This migration took the form of a general movement, and what we know as "the West" steadily moved onward from the Atlantic to the Pacific.

This westward movement was well begun when, in 1804, Timothy Smith arrived at his majority. It was inevitable that the young man, possessed of two suits of clothes and a hundred dollars in cash and free to go where he would, should be drawn into it. And so, late in the Autumn of that year, we find him making his way from Albany by water over the old Indian and military route—up the Mohawk, past the castle of Sir William Johnson to Rome, over the Great Carrying Place to Wood Creek, down that tortuous stream to Lake Oneida, over the lake to its outlet, and down the Onondaga, past the site of the ancient capital of the Iroquois confederacy, to Oswego. Here Smith acquired the trade of blacksmith and pursued it for several years.

In 1808 he settled in the town of New Haven, some eight miles east of Oswego, where he bought a tract of forest land for a modest sum. Here he lived and labored

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for ten years, during which he cleared up a large portion of his land and made a comfortable home. While at this time he lived alone, he was not without friends. The neighborhood was largely settled by Connecticut people. Among them was Joseph Boynton from the town of Litchfield, who kept a tavern on the road leading to Oswego. A niece of his, Lewie Pond, came from Litchfield on a visit in 1817 and remained to teach school. She was a daughter of Beriah Pond and one of thirteen children, ten sons and three daughters. At this time she was about thirty years of age, above the medium height, of dignified bearing, good-looking, and of strong character. Her ancestry included the Sanfords, the Porters, and several other leading Connecticut families. The coming of this young woman quickly proved fatal to the bachelor life of Timothy Smith. They were married in August, 1818; and, for a wedding journey, made their first and final visit to Connecticut.

We hardly realize the vast changes wrought by the progress in transportation facilities in our time. It has almost banished from the world the old pathos of parting. At the time of which we write, a migration from the East to the West usually meant final partings between those who went and those who remained behind. How sadly pathetic were such partings, the letters of the time bear witness. Members of families, separated by only a few hundred miles, write without hope of meeting this side of heaven.

Nineteen happy years now swiftly passed over the Smiths. Within these years there came to them two daugh-

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ters and two sons, Mary and Elizabeth, Henry and Charles. But these years on the frontier were not without their trials. In 1828 the farm was lost, through the breach of a bond upon which Smith had become surety for a neighbor charged with some offence, conditioned that the principal should "keep the limits of Oswego." The savings of twenty years gone, and only household goods, blacksmith tools, a span of horses, and a heifer remaining, the father resumed his trade for three years. He then bought a forest tract on a hillside near the village of New Haven and cleared up another farm. But this did not prove a satisfactory venture. The new farm was even more than usually stony. Each ploughing brought to the surface a new crop, and ten years of picking up stones made but little impression.

By this time it seemed desirable to seek a wider opportunity on the receding frontier. Hence, in 1887, the farm was sold for a thousand dollars, and the family joined the migration that was setting in from western New York into northwestern Pennsylvania. It was this region that The Holland Land Company of western New York was now opening up to settlement; and it was partly due to its influence that the northwestern counties of Pennsylvania have always been so closely related to the adjoining counties of New York. Smith purchased from the company two hundred acres of dense forest land near Oil Creek, a few miles southeast from the site of Fort Le Boeuf, which young Major Washington visited in the Winter of 1758-54 to summon Saint-Pierre, the French commandant, to leave the valley of the Ohio.

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It is difficult to conceive of a harder task of its kind than that now entered upon by Timothy Smith at fifty-five years of age, to create from the wilderness his third farm. The settlement was new, there being only here and there a clearing. The western slope of the valley of Oil Creek was then densely wooded with beech and maple. Its eastern slope was even more densely covered with hemlock and beech. For many miles in every direction over hills and valleys stood as heavy a forest as grew anywhere save in the far West. Immediately and for miles to the eastward the dense hemlock woods remained, with clearings at intervals, until a few years ago. Smith's purchase was on the border where the dark hemlock meets the lighter beech and maple. Here for twenty-three years he and his two sons attacked the woods, constructed rail and stone fences, and built ample farm houses and barns, and cleared one hundred and fifty acres of land, creating two farms. In the meantime other settlers came and slashed and burned half the forest in the vicinity and westward to the Western Reserve in Ohio. A cosy village, with its churches and schools, its grist mill and woollen factory, its blacksmith shop and tannery, its stores and tavern, spread itself comfortably a mile away on the banks of Oil Creek. The Philadelphia and Erie Railroad passed ten miles to the north; but not yet had the locomotive made its way down the creek to reach the newly discovered oil wells to the southward. In lieu of this, continuous processions of wagons loaded with barrels of crude petroleum passed on their way northward by every travelled road during the years just preceding the Civil War.

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Changes, more personal, came to the family of Timothy Smith within these years. All the children married. Mary died childless. Elizabeth, with her husband, settled on the frontier in Missouri. Henry and Charles, with their children, remained on the farms which they had helped the father to create from the wilderness. The title to both farms remained without question in the old pioneer.

We may here pause in our narrative to consider the attitude of Timothy Smith toward religion and politics, the two all-absorbing subjects of interest to the plain men of his time. The religious influences which so dominated the training of his early years left their deep impress upon him. In character and morals he was a stern and unyielding Puritan to the end. He had revolted from the harsh theology of Jabez Holbrook, and the sepulchral piety that was the very atmosphere of the Tucker home. To the disquiet of the members of his family, he always refused publicly to confess the orthodox faith. This course was no doubt somewhat due to the roughness of the frontier settlements in which he lived and to the unattractiveness of their infant and struggling churches. In his later years he claimed to be a Universalist, but it is not certain that he ever clearly knew what the Universalists believe. He no doubt understood their faith to embrace a scheme of salvation sufficiently elastic to include him. In a time when religion was cultivated chiefly as a means of escape from eternal punishment, this was the one really vital consideration, and he seems to have felt secure to the last. He was tolerant of the religious views of others and would not join in religious discussions. After his removal from

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Connecticut he never regularly attended church services, but left that privilege and duty to the other members of the family. To his wife he tacitly committed the religious training of their children. She did not find Congregational churches on the frontier, and so identified herself with the Presbyterians, with whom she felt entirely at home. All the children became members of their mother's church as they neared maturity, and later shared her concern for the father's spiritual welfare. While he did not himself wish to avow the orthodox faith, he was no doubt glad of his wife's earnest Christian character, and glad to have her give to their children an affirmative Christian training in which he was without inclination to participate. For himself he had acquired the very spirit of Christianity free from the dogmatism of his day. By character and conduct he commended that spirit to all who knew him. In his inner as well as outer life he was unconsciously a pioneer. His faith was not less deep or real because tolerant. It but anticipated the simple but genuine faith of our time.

It was probably due as much to his lack of sympathy with the religious formalism which then found such constant expression in private letters, as to his lack of schooling, that Timothy Smith left the family correspondence to his wife. Her education was better than his and she became the family letter writer. Her correspondence breathes the deep pathos of hopeless family separation already noted. It expresses the consciousness of nearness to the inevitable tragedy of life, so common to the people of her time. It also discloses their anxious concern for the

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spiritual welfare of kinsmen and friends. To them escape from eternal punishment was the opportunity of life, and orthodox conversion and confession of faith the one means of its improvement. Abraham, a brother of Timothy, from his Connecticut farm at Oxford writes: "Having heard nothing from you for a number of years, I write hoping that you are yet in the land of the living enjoying the comforts of life and especially living in the light of God's reconciled countenance, for it must be a gloomy thought for an old man spending the evening of his days without any well-grounded hope of eternal life. . . . There is a blessing that is of more value than health, riches, honor, friends. Do you enjoy that blessing? If you do, rich are you indeed. If you do not, you are miserably poor whatever your worldly possessions." Again he writes: "I know the Lord does hear and answer prayer, but the prayers of friends will not avail. If you wish salvation, you must ask for it yourself. He that asketh receiveth, and he that seeketh findeth. This is indeed a changing world. While we are in life, we are in death. There is but little time for this world." Lewe herself writes to her daughter: "Your mother is yet spared. The Lord is good unto me in sparing my life from day to day, unprofitable as it is." A brother writes her: "We are all getting really old. I cannot stay much longer. My birthday has passed over me fifty-five times."

A brother who went to Georgia early in 1821, married, and prospered there, writes her in 1846: "I am very desirous to hear of our aged mother. I know she must be very old if she be yet alive. I begin to feel that

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I am growing old, but some of my brothers and sisters are older. Are they still alive? and how do they do? and more than all, how are they in the great matter of living—the preparation for dying?” In 1856, he writes: “Your welcome letter is the first word I have had from a single relation of mine in some two or three years. Indeed I have never had a letter from any of them but you in all these thirty-five years or more I have been here. My mind every day runs away to my distant mother and brothers and sisters. . . . Our three eldest children are members of our church and we hope for them, but cannot say that they are as devotedly pious as we could wish. The youngest of the three seems most devoted. It would do you good to see her. Of the other five younger ones, I have room only to say, and to thank God that I can say, they are all fine children. We have equal numbers of boys and girls—four each and two in heaven. Our youngest is between three and four years old and a very sweet, handsome, and smart little fellow,—but we love him too much, so I am afraid every day that Our Heavenly Father will take him. I hope all yours are safely included in the covenant of grace. . . . My dear good sister, you call on me to help you praise God for His goodness to you. I am ashamed that I do not praise Him as I ought for His goodness to me. Surely goodness and mercy have followed me all the days of my life.” Again, in 1857, he writes: “I thank God that our aged mother is yet alive. I am very anxious that she should hear from me once more, and be assured I love her still, and do earnestly pray almost every day that the good Lord will be gracious to

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her and deal kindly with her whilst she lives, and that He will grant her the consolations of His grace and joy and peace in believing, and that hope which shall abundantly sustain her until she be taken up to live with Him forever."

Such were the messages sent and received by the plain people who did the mighty pioneer work of their time. Their lives were simple and related to but few facts. They took life seriously; they were sincere if not broad. They knew only a few things. These had large relations, and with them they lived on terms of great familiarity. Like all who read little they saw clearly and heard distinctly. They knew the contents of one great book, and that the greatest of all. The very expression of their anxiety whether loved ones left behind were yet alive, their consciousness of the nearness of death and the presence of God, show how deeply that book influenced their thought and speech. It was because they were above all alive to moral issues that they were unable to ignore the cry of the slave. They could not long be held responsible for legalized injustice.

The one great and abiding interest that made the clearing and cultivation of farms something else than the drudgery to Timothy Smith was politics. His memory went back to the struggle for the Constitution. Upon the first formation of national political parties he became a Federalist. He refused to yield to the successive waves of Democracy that swept over the land under the leadership of Jefferson and Jackson. In due course he became a Whig, an Abolitionist, and finally a Republican. He was always and everywhere ready to defend and advocate

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his political faith. For many years he subscribed for "The Evangelist," a Presbyterian weekly, for his wife, and "The New York Weekly Tribune," for himself. While he read little else he kept well-informed touching political movements. As the anti-slavery conflict deepened he became more and more absorbed in it. The cause of slavery aroused his Puritan conscience as it was never before aroused. He abhorred slavery as an unholy thing. More and more he came to feel a personal responsibility for it, because of its protection under national law. He had many sharp personal debates with his Democratic neighbors, and some of these led to ill feeling. He was known for miles around as an Abolitionist, and was among the first to join the Republican party upon its formation. Whether his political views were popular had not the slightest effect on his faith in their soundness. He was a non-conformist to the core. He always rejoiced in the independence of the farmer's life, claiming that tradesmen and professional men cannot be and are not free to think and act independently. He was wont to say: "My grain and my hogs bring the same price whether folks like my politics or religion or not."

The year 1859 brought a heavy blow to the family. The oldest son and his wife died, leaving four small children, two boys* and two girls. Their mother's family desired to take two of the children, but the old man would not have it so. The members of their mother's family were leading Democrats in the village, and Timothy Smith was not then in a state of mind to permit any of his grand-

* The elder of these boys was Edwin Burritt Smith.

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children to be brought up as Democrats. For some time he had talked of removing to Illinois, but had not been taken seriously. Now, the oil excitement having raised the price of land, he and his son Charles concluded to sell and again seek the frontier, taking all the children with them. They arrived at a way station on the Wabash Railroad a few miles east of Decatur early in 1860, on the eve of the political campaign of that memorable year.

Those who only know central Illinois as it now appears can never realize what it was less than forty years ago. The Illinois Central and Wabash Railroads were then but recently completed. Much of the land granted to aid the Illinois Central was still owned by the company. The great prairie lying east of Decatur and south of the Sangamon River was still almost undisturbed. The early settlers, most of them from Kentucky and southern Indiana, occupied the lands adjacent to the timber along the river. Each farm, as a rule, had a wood lot of a few acres on the Sangamon. Small villages situated about four miles apart were growing up along the Wabash Railroad. Between the river and these villages the prairie lands had been "taken up" and were in process of improvement, some of them having been given by the government to veterans of the Mexican War. Beyond the railroad to the south one might go from a dozen to twenty miles over unbroken prairie. The country was flat and without drainage. How wet and, when it rained, how muddy it was, seems now incredible.

The great prairie was one vast meadow on a black soil of unsurpassed fertility. It was covered with waving grass

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and at different seasons with white and pink, purple and yellow, wild flowers, many of them of great size. On the higher ground the grass grew from two to three feet, and in the numerous ponds and swamps, from six to ten feet high. In many of the ponds the water stood the year round. And this was still the home of a great population of insects and snakes, rabbits and prairie wolves, birds and fowl. Wild ducks and geese and blue cranes were so numerous that great flocks of them might always be seen and heard in their season. Prairie chickens were so abundant that their deep booming made every horizon ring on spring mornings. Whether the prairie would ever be entirely settled was still among the settlers a mooted question. Many believed that men could not or would not live more than five miles from "the timber" along the river; and that beyond that the prairie would always remain unbroken. All of it has long since been occupied and tile-drained. No trace of a pond or swamp remains. Prairie farms now sell at from seventy-five to one hundred dollars per acre.

Timothy Smith, upon his arrival in Illinois, was in his seventy-eighth year. Though he was yet hale and hearty, he felt unequal to farm work, and was finally persuaded to give up all but the chores about the house and garden. He built a house in the village for himself and wife, his widowed daughter, and some of the grandchildren. Charles bought a partially improved farm near by on the edge of the unoccupied prairie.

And now came the election of 1860, followed by the terrible ordeal of civil war. The old man found himself

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in the country of "Honest Abe Lincoln." Most of the older settlers had seen and heard Mr. Lincoln in court at Decatur or Monticello. Of these not a few claimed a friendly acquaintance with him. Stephen A. Douglas was also well known to many. Both great leaders had warm personal friends among the hardy pioneers who had come to Illinois to turn its prairies into grain fields and make the State a political battle ground. There was of course no question as to the choice of Timothy Smith. He became intensely interested in behalf of the success of the Republican cause, and soon shared in the local enthusiasm for its leader.

The election over, only those who lived through the years of civil strife can now realize the anxiety and suspense, the hopes and fears, the alternations of joy and grief, of those who remained at home. The family fully shared these experiences. A brother-in-law of Charles was among the first to enlist. He was taken prisoner and held in Libby Prison. When finally exchanged he was so broken in health that he soon died. From New York and Connecticut four of Timothy's nephews went to the front. To his great grief some of his Georgia nephews were engaged on the other side. One of his nephews from the North was killed at Bull Run; another was mortally wounded at Fair Oaks. Upon the latter's death his mother writes: "I think Christians ought to lie low in the dust before God and cry unto Him day and night that he would spare this nation. We are being sorely punished for our sins."

The old man's faith in the cause of the Union did not

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falter nor his purpose change because of these personal bereavements. He had read to him every item of war news, and talked for hours with soldiers home on furlough of their experiences in the field. It was impossible for any one, not in a place of responsibility, to be more concerned for the success of our arms. The cause of the Union was on his heart and he followed every step of the President and his lieutenants with a supreme anxiety. The death struggle in which the nation was engaged was the culmination of the political movements in which he had humbly shared, and which had formed the one great study and interest of his life. As the conflict deepened he came more and more to rely upon the persistence, the strength, and the wisdom of Abraham Lincoln. Indeed, Lincoln stood forth before the world the very embodiment of the characters and ideals of such men as he. The great commoner had risen above the plain people all over the land whose prophet and leader he was, without ceasing to be what they were. It was this, in the words of Carl Schurz, that "made his so fascinating a character among his fellow men, gave him his singular power over their minds and hearts, and fitted him to be the greatest leader in the greatest crisis of our national life."

The war was not the only trouble that came to the family of Timothy Smith. The prairie of Illinois was in wet seasons one vast malarial swamp. Within five years five members of the family died, including early in 1865 his son Charles, who had long been in feeble health. But still the old man and his wife lingered. It was, it seems, decreed that he should live to see the triumph of the cause

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which was now the supreme interest of his life. The death of his last surviving son was a great blow from which he never recovered. Already broken in strength he took to his bed in February, 1865. For several weeks his life hung in the balance. Early in March he seemed better and asked to have Lincoln's Second Inaugural read to him. That inspired utterance went to his very heart. It satisfied him and was an adequate expression of what he felt, but could not himself express. Still he lingered, awaiting the final announcement that the Union was saved. April ninth came, and with it the surrender of Lee. From the New York *Tribune* was read to him the editorial "Lee Surrenders," in part in these words:

Lee has surrendered. Our struggle is over; the new birth of the nation is accomplished; the revolution, begun a hundred years ago, is fulfilled; Republicanism, tried by the severest test to which it can ever be put, is triumphant; domestic treason is utterly suppressed and punished; freedom is extended to all the people; that all men are created free and equal is no longer an abstract principle, but the faith and the foundation of a nation; the South is conquered, the Rebellion over, and peace immediate with a Union restored and purified. . . . The good fight has been fought; the Right has triumphed. We are a Nation, no longer divided against itself, but one, indivisible, united, *free*. . . . The Republic is saved forever from its great curse and shame. It will not be divided; it will all be free.

The joy of the old pioneer was too great for his feeble strength. He became worse, his mind remaining clear. The dearest wish of his life was realized. It was enough for him that his country was saved; that it had ceased to be divided.

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April 15, 1865, was a warm spring day on the prairie. The door was opened late in the forenoon to let in the fragrance of the early spring flowers. Suddenly Herbert Jones, the sixteen-year-old son of the keeper of the corner store, came running down the middle of the street, shouting between his sobs: "Lincoln is killed! Lincoln is killed! What shall we do? What shall we do?" The startling announcement reached the old man's ears. The shock was too great for his waning strength; he sank back fainting. While the world poured out its grief at the bier of the great commoner who had saved the Union, the mortal remains of one of his plain people were tenderly laid at rest beneath the sod of Illinois.

TRUSTS: THEIR LEGAL STATUS *

THE word "trust" has become a term of indefinite meaning. It was appropriately employed a few years ago to designate the holding by trustees of the controlling stocks of several competing corporations to effect their practical consolidation. The oil and sugar trusts were notable illustrations of this form of industrial combination to limit or destroy competition. The term "trust," as now used, may be loosely defined as a combination of the productive forces in a given industry to create a monopoly by which to control production, reduce expenses, and raise prices. Its final and most perfect form is the monopoly corporation to own and operate all the properties involved. True, the term covers all "pools," "associations," "understandings," "gentlemen's agreements," and combinations of every sort to restrict production, reduce expenses, and control prices. These are, however, but steps in a vast industrial evolution or revolution. They are steadily making way for the incorporated trust. The real question lies between organized society on the one hand and the mighty monopoly corporation on the other. When the final issue is joined it will be found that the forces of monopoly have retired from the open field of clearly illegal engagements to the strongly fortified camp of incorporation.

Every lover of definite language, every lawyer who

* Reprinted from "Self Culture," August, 1899.

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cherishes the grand old word "trust" as used in equity jurisprudence, joins with Mr. Aldace F. Walker in deploing its transformation in popular speech into a term of opprobrium. To lawyers it will hereafter have two distinct meanings, one definite and true in equity jurisprudence, the other indefinite and opprobrious to describe combinations for ends hostile to public policy.

The recent rapid formation of trusts, "the rush to industrial monopoly," is the source of great and growing popular apprehension. It seems to be working in our midst a stupendous industrial revolution. The end cannot be foreseen. The gathering storm may prove to be a destroying cyclone or but the precursor of a better industrial day. Be this as it may, it is now both possible and wise to inquire into the legal status of the monopoly corporation and to take stock of the resources with which organized society is equipped to meet this modern form of feudalism. This calls for a somewhat elementary inquiry into the nature and function of the corporation and its proper relations to the individual and to organized society.

The individual is the natural industrial unit. In a state of entirely free competition each individual would freely compete with all others. None would receive aid from any other or from the law of the land. Whether these conditions long prevailed anywhere, or were indeed possible save in primitive society, we need not here inquire. Whether they were ever, or would now be, desirable, it is too late to consider. We may note in passing that the assumption by the courts that they are still largely both

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possible and desirable lies at the root of many decisions at common law touching the illegality of "monopolies" and agreements in restraint of trade. If they had prevailed, every business would be owned and conducted by an individual.

The land, its control and cultivation, long almost exclusively occupied man. Trade was limited and mainly local. Access to the sea alone gave opportunity for commerce. The means of transportation afforded by the sea were open to all on easy terms, and any general commercial monopoly was impossible. Early in the vast industrial development of modern times the advantages of some association of effort and capital became obvious. To secure these, combination was inevitable. This at first took the form of copartnership. Two individuals, by combination of effort and capital, could of course do at less expense and with greater economy of plant and effort what they could do separately. They could also by such association limit or suppress local competition. For example, two competing bakers having each a shop, an oven, a journeyman, and an apprentice, could by combination save rent and fuel, reduce waste, and perhaps dispense with all assistance. If the only bakers in the village, their copartnership established a monopoly. Yet this did not constitute an offence at common law. They might, in combination as copartners, even temporarily reduce prices to prevent or stifle competition.

Under these conditions copartnership in time shared with individuals almost the entire field of industry and trade. Though as a rule in control of the larger enter-

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prises, the copartnership did not drive to the wall the individual manufacturer and merchant. Individuals, and combinations of other individuals by way of copartnership, engaged as competitors on terms not seriously unequal in similar branches of industry and trade.

The next step in the march of combination was the employment of the corporation as an instrument of industry and trade. The copartnership had appeared to supplement individual effort and capital, and thus make possible larger enterprises. The corporation followed to supplement both, and thus provide for still larger and more stable undertakings. Between the first and second of these there is no sharp distinction. Between them and the industrial or trading corporation there is a definite line.

Individuals, whether acting alone or as copartners, appear in the world of industry and trade as natural persons. Each stakes all that he is and has, and all that he hopes to be and acquire. His business may employ only a fraction of his capital, and but little of his personal effort, yet he embarks his all in the enterprise. The individual, his good name, his possessions, his prospective acquirements, stand sponsor for every action. These hostages to good conduct "are impediments to great enterprises." Few men will risk so much beyond the power of their personal ability of control. Then, too, the copartnership depends on the continuance of a good understanding among its members. Its dissolution by the act or death of any member is always imminent. Individual enterprise and copartnership combination in industry and trade have thus distinct and general limitations. They

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are affected by the mutability of human life and bounded by personal limitations.

The corporation is subject to no such restrictions. It is impersonal in character. It is without relations beyond the enterprise for which it is organized. It risks nothing but the capital which it employs. It may grow to any dimensions. Its field may be the world. If not immortal, its mortality is not to it an ever-present menace. No cloud projects a shadow beyond its insolvency. Failure brings to it nothing but death and oblivion. Those who own and breathe into it the breath of life stake nothing but the purchase-price of their holdings of its stock. Protected and shielded by it from personal responsibility, and even from the public gaze, they quietly determine its every act and absorb the profits that result. If disaster comes, they beat a well-ordered retreat, leaving the wreckage to the creditors. Such are the characteristics of the impersonal colossus, of unlimited powers and limited liabilities, that now threatens the very foundations of public order.

The private corporation, it should always be remembered, is wholly a creature of law. As the public welfare is the first and last concern of law, it should provide for and protect private corporations only to the extent that such artificial combinations of private citizens subserve the public good. Their only justification must be found in the public need for the combination of the efforts and capital of many individuals to carry forward enterprises of public utility, which are beyond the ability of natural persons, whether acting alone or in partnership, to undertake. The rigid observance of this limitation would have

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made impossible many of the grave corporate abuses from which society now suffers. It would have confined the sphere of private corporations to public or quasi-public enterprises of great magnitude, such as the telegraph, transportation, lighting, banking, and possibly mining, and a few other great industries. In lieu of this reasonable employment of the private corporation in the field lying beyond ordinary private enterprises we have permitted and even encouraged it to invade all occupations, there to enter upon unequal terms into a war of extermination against individuals. In almost every State any one, aided by a few dummies who merely sign their names, may incorporate for any purpose which, as he chooses to state it, is not illegal. Indeed, in many States, no unpleasant questions are asked as to the purpose. The issue of charters of incorporation to all comers, usually for nominal fees, has become merely a clerical function. The desire of any adventurer to escape personal liability for his acts, of any number of persons engaged in any business whatever to combine and place at disadvantage their competitors, now controls the issue of charters of incorporation. Thus the public need—the only true test of corporate combination—has everywhere given way to private greed. Here lies the root of the noxious growth which we know as the monopoly corporation. If corporate combination was strictly limited to public requirements for the conduct of enterprises beyond the scope of ordinary individual initiative, the problem of the trust would be relatively a simple one.

The private corporation as the child of positive law

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has the characteristics with which that law has endowed it. If found to be other than an obedient servant of the people, if not a factor making for the common welfare, the law is at fault. An artificial distinction between the corporation and the individual lies in the interpretation which has been given to that clause of the United States Constitution which provides that no State shall "pass any law impairing the obligation of contracts." Had this clause been held simply to affect the contracts of natural persons and like engagements between them and private corporations or the State, and not those between such corporations and the State, the monopoly corporation would not to-day in America dispute the field with public authority.

The famous leading case of *Dartmouth College vs. Woodward** prepared the way for a construction of this clause of the Constitution under which the charter of every private corporation becomes at once a contract between the State and its offspring, whose obligation may not be impaired by subsequent legislation. This rule, in view of the reckless prodigality with which charters are issued, as already noted, operates greatly to the prejudice of natural persons. While such persons, as citizens, are the source of law, they are as individuals subject to its provisions and constant changes. The State would scorn to enter into any contract for stability with individuals subject to its authority. It abdicates for them none of its legislative powers. They must embark their all in the hope that by future legislation the State will not materially change the conditions which have induced their risk. They

* 4 Wheaton (U. S. Rep.), 519.

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can have no other guaranty than that their property shall not be taken for public purposes without just compensation. Beyond this they can only hope for reasonable stability.

The private corporation is exposed to few such risks. By the act of its creation, usually a mere clerical function of some public official, the State surrenders—perhaps in perpetuity—some portion of its legislative power. By every enactment providing for the issue of corporate charters the legislature binds its successors to the extent that charter contracts are entered into under its terms. Thus to the immunity of the private corporation from interruption or dissolution by the death of its members the contract clause of the Constitution as thus far interpreted adds exemption in large measure from legislative control. This tremendous advantage might be free from serious objection had the operations of the private corporation been confined to the field which lies beyond individual effort; but, because of its invasion of the domain of personal enterprise it amounts to a discrimination by law in favor of an artificial body against the citizen. Except for the obstacle of this constitutional guaranty the State would at any time be at liberty to impose such restrictions on private corporations as the public welfare may require.

It is true that some States have in recent years, by provision of their general incorporation laws, expressly reserved the power to modify or annul charters issued by them; but we have become so accustomed to regard the charter powers of private corporations as vested rights that no considerable use has yet been made of the power

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to amend or annul so reserved by the State. Its possibilities will be left for the discussion of public authority to impose restrictions upon existing monopoly corporations.

This, however, is not the whole story. Private corporations often appeal to public authority for increased powers; and some of them require licenses to use public property and facilities. All grants of such powers and licenses are also held to be "contracts" between them and the State or municipality, which may not be impaired under the contract clause of the Constitution. To secure them the powerful private corporation presses its demands upon the public authorities with persistence and usually with success. Its defeats are but temporary checks. Its victories are permanent conquests. Every public grant to it at once becomes a vested contract whose obligation may not be impaired even to correct a public wrong.

Thus it appears that the private corporation—a creature of positive law the sole justification of whose being is the public need—has been permitted to invade and largely to possess the field of personal enterprise; that we have all but lost sight of the reason for its being and allowed its multiplication without restraint for any and every purpose, with no thought of the public welfare, but only of the desire of its promoters; and that we have raised it above the law, where it may dispute even public authority, thereby giving it a tremendous advantage over individual competitors.

It seems all but incredible that State governments, which are merely representative of individuals possessing the franchise, almost all of whom are engaged in industry

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and trade, should have permitted the private corporation—a mere creature of law—not only to enter into every field of personal enterprise, there to compete on unequal terms with the individual citizens, but to wage against them a war of extermination. It seems even more incredible that a government which is itself but the agent of free men should surrender to these impersonal creatures of law some portion of its own merely delegated authority, thus arming them with some of the powers of the State itself. The situation calls for a reëxamination of the action through which these results have been reached. The time has come to consider whether constitutional guarantees intended for the protection of the individual have not been perverted to the service of the private corporation. We may well inquire whether the State and its creatures exist for the service of the citizens or to minister to the monopoly corporation,—if the welfare of all the people shall give way to the personal interest of a privileged few. We may rest assured that the case is not closed in favor of vested rights whose vesting rests merely upon old interpretations of general constitutional provisions. We have perhaps come to regard the term “vested rights” as too inclusive, and made it also to cover what Washington Gladden has well characterized as “vested wrongs.” The question seems to be fairly presented whether Mr. Lincoln’s vision of a government of the people by the people for the people shall give place to a government of the monopoly corporation by the monopoly corporation for the monopoly corporation’s stockholders.

It is not intended by what has thus far been said to

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prejudge the final issue between the public and the monopoly corporation. It is, however, assumed that the public welfare, whatever it shall prove to be, is paramount; and that all other interests, however worthy or important, are but secondary. We have thus far but stated in general outline the relative positions of the contending forces. This is not the place to discuss the economic questions involved between them, even if the writer had any peculiar qualification for such a discussion. It is proposed here to consider what may be done about the monopoly corporation, leaving it for the economist to say what ought to be done within the limits of what may be done.

The monopoly corporation is a development. Some believe it to be a natural growth; while others regard it as an abnormal product of our commercial and legal conditions. Mr. Aldace F. Walker, in his recent article on "Anti-Trust Legislation," * announces his conclusion that it is the direct consequence of such legislation.

Thus, in the view of one of our ablest and most experienced observers, who believes that we have placed too much reliance on competition, and that it is not now the

* "The Forum," May, 1899, p. 262. Mr. Walker states the situation as he sees it thus:

"Men have been driven by some power higher than the law to find a legal method of accomplishing a given result which legislators have endeavored to prevent; the method devised is one which they would have preferred not to employ; its adoption has been compelled because all other methods were made illegal.

"What, then, is the commercial force that has driven business men to this position? The answer is easy when the subject is broadly viewed. Laws cannot subdue the natural effort to overcome the violence of excessive competition."

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life but the death of trade, excessive competition has finally led to excessive combination.

It is true that the competition which it has so long been the policy of the law to preserve as the very life of trade has under modern conditions become a veritable war of extermination between unequal forces. Far different were the conditions from which sprang the common law with its anathema of illegality against agreements for the creation of monopolies and in restraint of trade. The early cases dealt with merely local competition, the competitors acting usually in the same locality under like conditions and upon relatively equal terms. Then followed the great abuse known as patents for monopolies. This abuse culminated in the reign of Elizabeth in numerous grants of patents for monopolies by the queen to her servants and courtiers, who usually assigned them to others and thus enabled them to raise prices and place almost incredible restraints upon industry and commerce.

Queen Elizabeth's monopolies were—due allowance being made for difference of conditions—no mean rivals of our monopoly corporations. Hers held patents from the Crown; ours hold charter contracts with the State. The former shared the royal prerogative; the latter share the delegated powers of a democracy.

The legality of the patents for monopolies did not long remain unquestioned. In 1562, in the great case of *Darcy vs. Allen*,* the court pronounced them void.

* 11 Coke, 84. In this case the plaintiff, who was a groom of the privy chamber to Queen Elizabeth, brought suit for infringement of a patent giving him "the whole trade, traffic, and merchandise of all

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It appears from the conclusion of the original report of this case that—

Our Lord, the king that now is, in a book which he, in zeal to the law and justice, commanded to be published *anno* 1610, entitled "A Declaration of His Majesty's Pleasures," etc., p. 18, has published, that monopolies are things against the laws of this realm; and therefore expressly commands that no suitor presume to move him to grant any of them.

playing-cards" and the manufacture thereof "within this realm." It was declared in support of the grant that the queen, "intending that her subjects, being able men to exercise husbandry, should apply themselves thereunto, and that they should not employ themselves in making playing-cards, which had not been any ancient natural occupation within this realm, and that by making such a multitude of cards, card-playing was become more frequent, and especially among servants and apprentices and poor artificers; and to the end that her subjects might employ themselves to more lawful and necessary trades, by her letters of patent under the great seal," granted to the plaintiff "full power, license, and authority, by himself, his servants, factors, and deputies, to provide and buy in any parts beyond the seas all such playing-cards as he thought good, and to import them into this realm;" and also to have the exclusive right of manufacture and trade as above stated.

The court, however, waived the opportunity to strike a blow at excessive card-playing and declared the grant void for these reasons:

(1) All trades, as well mechanical as others, which prevent idleness (the bane of the Commonwealth) and exercise men and youth in labor for the maintenance of themselves and their families and for the increase of their substance, to serve the queen when occasion shall require, are profitable for the Commonwealth; and therefore the grant to the plaintiff to have the sole making of them is against the common law, and the benefit and liberty of the subject.

(2) The sole trade of any mechanical artifice or any other monopoly is not only a damage and prejudice to those who exercise the same trade, but also to all other subjects; for the end of all these monopolies is for the private gain of the patentees.

(3) The queen was deceived in her grant; for the queen, as by the preamble appears, intended it to be for the weal public, and it will be

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A few years later, in 1628, in order to deliver the Crown, as well as suitors for patents, from all further temptation in this direction, Parliament, by statute against "monopolies," provided in part as follows:

That all monopolies, and all commissions, grants, licenses, charters, and letters patents heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of anything within this realm, or the dominion of Wales, or of any other monopolies, or of power, liberty, or faculty to dispense with any others, . . . are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect and in no wise to be put in use or execution.

Parliament had, by statute of 5 and 6 Edward VI, prohibited "engrossing."* The purpose of the statute

employed for the private gain of the patentee, and for the prejudice of the weal public.

(4) This grant is *prima impressionis*, for no such was ever seen to pass by letters patents under the great seal before these days, and therefore it is a dangerous innovation, as well without any precedent or example as without authority of law or reason."

The court went on to say that monopolies have, as inseparable incidents, the following:

(a) That the price of the same commodity will be raised; for he who has the sole selling of any commodity may and will make the price as he pleases. (b) That after the monopoly granted, the commodity is not so good and merchantable as it was before; for the patentee, having the sole trade, regards only his private benefit, and not the commonwealth. (c) It tends to the impoverishment of divers artificers and others, who before by the labor of their hands in their art or trade had maintained themselves and their families, who now will of necessity be constrained to live in idleness and beggary.

*To "engross" was to get possession or control, by buying, contracting, or promise-taking, of the whole or a considerable portion

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was to do away with middlemen, on the assumption that they enhanced the price of the necessities of life. By the same act the similar offences of "forestalling" and "re-grating" were made penal.*

Under these and subsequent statutes the line between what was legal and what was criminal became exceedingly vague and uncertain. The fear of combinations to increase prices led to the enactment of hundreds of general and special statutes. The statute of George I, known as the Bubble Act, made it a crime, punishable with death and confiscation of goods, to form voluntary associations and issue transferable shares therein. By statute of 17 George III, combinations by partnership or otherwise for the purchase or sale of brick were declared illegal; and by that of 28 George III it was made unlawful for five or more persons to unite in covenant or partnership to buy coals for sale. Similar statutes made criminal all kinds of associations of business and working men, on the theory that by association prices and wages would be increased and the industry of individuals injured. Had it been possible strictly to enforce these acts, middlemen would have been suppressed and all association of effort and capital destroyed. The failure of legislation of this character to take "good effect" is confessed in the preamble to the act of 5 and 6 Edward VI, in these words:

Albeit divers good statutes heretofore have been made against forestallers of merchandise and victuals, yet for

of any necessary of life in the nature of provisions, with intent to resell in the same form.

* This act has been repealed.

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that good laws and statutes against regrators and ingrossers of the same things have not been heretofore sufficiently made and provided, and also for that it hath not been perfectly known what person should be taken for a fore-staller, regrator, or ingrosser, the said statutes have not taken good effect, according to the minds of the makers thereof.

The public policy which it was sought to express by these enactments was then, and still remains, difficult of exact definition. From that day to this the limits of combination and the extent of business enterprise under a single management within the line of legality have depended on the individual views of public policy held by the judges. In early days it was held illegal to contract for 258 acres out of 30,000 acres of growing hops. The purchase of 8,000 bushels of corn, of 3,200 bushels of wheat, of 1,600 bushels of oats, of 672 pounds of butter, of 18,482 pounds of cheese, of 100 bushels of salt, of "a great number of wild fowle," and of "a great quantity of straw and hay," were held by the courts to be violations of the statutes. From these early judgments, affecting small and usually local transactions, there is a long line of decisions against acts held to be in contravention of public policy. While the courts have never been able to fix the limits of public policy, and while complaint is sometimes made of the supposed increasing frequency with which they resort to it as authority for refusing to give effect to contracts, the rule is finally fixed that undertakings which have a tendency to be or are clearly injurious to the public shall be held void and refused the sanction of the courts. The element of public policy in the law of

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contracts has its origin in the very sources of the common law.

The rule of public policy upon which rests the numerous decisions in both England and America pronouncing illegal or criminal combinations and agreements for monopolies or in restraint of trade is of necessity a flexible and changing rule of decision. In the words of Lord St. Leonards, "It has been restrained and limited and qualified up to this very hour." The purchase of a few thousand bushels of grain, a few hundred pounds of butter, or even "a great quantity of straw and hay," is no longer illegal anywhere. Free trade, even in the necessities of life, has been found conducive to lower rather than higher prices. But, both by legislation and judicial decisions in the United States, the attempt is still strenuously made to place limits upon combinations to monopolize industry and trade.

The tendency in England has long been toward greater toleration of combinations for business purposes. Corporations and joint-stock companies, organized to conduct business on a large scale, are now regarded as legitimate enterprises. Many of the old statutes in regard to trade have been repealed.

The recent case of *Mogul Steamship Company vs. McGregor*,* is regarded as a departure from the earlier authorities and in favor of a greater toleration of combinations to monopolize industry and trade. The defendants, who were firms of shipowners engaged in the China trade, formed themselves into an association to control the trade and maintain rates. The plaintiffs, being ship-

* L. R. 23 Q. B. D. 598; [1892] App. Cas. 25.

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owners engaged in the same trade, were excluded from the association. The court held that the association was not illegal, although it appeared that it gave rebates to merchants who dealt exclusively with its members, sent ships to compete with plaintiffs' ships, temporarily lowered freights, indemnified others to compete with plaintiffs, and dismissed agents who had acted for both parties. As was said by the court: "The means adopted were competition carried to the bitter end." Lord Morris, on the hearing in the House of Lords, said:

What one trader may do in respect of competition, a body or set of traders can lawfully do; otherwise a large capitalist could do what a number of smaller capitalists, combining together, could not do, and thus a blow would be struck at the very principle of coöperation and joint-stock enterprises. I entertain no doubt that a body of traders whose motive object is to promote their own trade can combine to acquire, and thereby in so far to injure the trade of competitors, provided they do no more than is incident to such motive object and use no unlawful means.

This great case has settled the law of England and made it there "perfectly legitimate to combine capital for all the mere purposes of trade for which capital may, apart from combination, be legitimately used." Fry, J., pronounces the repeal of the early statutes against engrossing and regrating "a confession of failure in the past, the indication of a new policy for the future"; and adds:

Thus the stream of modern legislation runs strongly in favor of allowing great combinations of persons interested in trade, and intended to govern or regulate the proceedings of large bodies of men, and thus necessarily to interfere with what would have been the course of traffic if unaffected by such combinations.

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The legal pathway of the monopoly combination has not been made so straight and plain in America as it thus appears to be in England. In our several jurisdictions, Federal and State, by the common law and numerous statutes we still seek to suppress monopolies and conspiracies in restraint of trade. The courts, when called upon, have pronounced invalid all combinations that would have been illegal at common law. Trusts, associations, and agreements have been declared void in almost every jurisdiction. The results have not been satisfactory. Great enterprises have been conducted in defiance of law. Adverse decisions have usually led to evasions, and often to the formation of monopoly corporations. With decisions and statutes in endless profusion and hopeless confusion, the trust has flourished here as nowhere else in the world. It is probably true that the rapid multiplication of monopoly corporations is due, not so much to the desire of their promoters to obey the law as to their efforts to evade it by bringing their enterprises within its terms in utter disregard of its spirit.

Reference to a few American cases will illustrate the attitude of our courts toward these combinations and show how radically it differs from that of the English courts. In *State vs. Standard Oil Company** the Supreme Court of Ohio held that an agreement by which all or a majority of the stockholders of a corporation transferred their stock to trustees in consideration of agreements by the stockholders of other similar corporations to do the same, all receiving trust certificates to represent their transferred

* 49 Ohio St. 138.

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stock and entitle them to draw the dividends on such stock, tended to create a monopoly and control prices, and was void as against public policy.

The Supreme Court of Illinois, in *People vs. Chicago Gas Trust Co.*,* held that a corporation organized for the manufacture and sale of gas and "to purchase and hold or sell the capital stock" and works of other gas companies did not have power to acquire and hold the stock of the existing gas companies of Chicago, the provision in its charter being void because against public policy at common law.

The Supreme Court of Illinois also held, in *Distilling and Cattle Feeding Co. vs. People*,† that a corporation, to succeed a trust, in fact organized by the trustees of the stockholders of several corporations to acquire the properties of such corporations, was illegal because repugnant to public policy, just as the trust itself had been. The court said:

There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound policy as when the trust was in existence. It was illegal before, and it is illegal still, and for the same reasons.

The Supreme Court of the United States, in *United States vs. Trans-Missouri Freight Association*,‡ held that under the Act of Congress of July 2, 1890, entitled: "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," all contracts in restraint of trade or commerce among the several States or with for-

* 130 Ill. 268.

† 156 Ill. 448, 490.

‡ 166 U. S. 290.

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eign nations are void, whether in the form of trusts or otherwise, and without regard to their reasonableness or whether they would have been unlawful at common law. Under this interpretation of the act an agreement between railroad companies, "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations," was pronounced invalid.

Many of the States have enacted drastic legislation for the suppression of trusts, the tendency being to increase the stringency of such legislation. A number of these statutes declare that—

all arrangements, contracts, agreements, trusts, or combinations made with a view to lessen, or which tend to lessen, free competition in the importation or sale of articles imported into this State, . . . in the manufacture or sale of articles of domestic growth or of domestic raw material [are] against public policy, unlawful, and void.

They proceed to provide for the forfeiture of the charters of domestic corporations which shall violate their provisions, for the exclusion from the State of foreign corporations (including those of other States) for their violation, and for the punishment by fine or imprisonment of the officers and agents of such offending corporations for conspiracy. They also give persons injured by such combinations a right of action for damages. Such in substance are the anti-trust statutes of Arkansas and Indiana. In Illinois and Missouri it is further provided that no corporation may issue or own trust certificates, or be controlled by any trustee or trustees, with intent to limit or fix the price or lessen the output of any article of

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commerce. In New York every contract, arrangement, or combination, whereby a monopoly in the manufacture or sale of "any article or commodity of common use is or may be created, established, or maintained," or whereby competition is or may be restrained or prevented, or whereby, for the purpose of creating or maintaining such monopoly, the free pursuit of any lawful business, trade, or occupation is or may be restricted or prevented, is declared to be "against public policy, illegal, and void."

The foregoing illustrations from the judicial decisions and legislation of the country may serve to indicate the extreme hostility of American law to all combinations to suppress free competition. The question naturally arises, Why do these combinations flourish here, as nowhere else, in the face of this hostility? The answer to this inquiry is not obvious, but complex. The public policy of the country on this subject must be sought in the entire body of its judicial decisions and the legislation affecting it. The truth is that the public policy which finds such abundant expression in anti-trust decisions and legislation is in direct conflict with the public opinion expressed in the loose incorporation laws of the various States, the contract clause of the Constitution, and the protective duties levied on imported goods. We have already noted the bearing of the first two of these on the trust problem. The tariff is even more important. While Mr. Havemeyer may exaggerate in pronouncing the tariff "the mother of all trusts," it is beyond all question the efficient wet-nurse of most of them. It would be strange indeed if domestic combinations to control the production and selling price

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of commodities should not be directly aided by laws imposing duties averaging some fifty per cent *ad valorem* on competing importations. Mr. Havemeyer, from his point of view, has good ground to criticise those who object to combinations of domestic producers to secure the enhanced prices which Congress—in what we are pleased to regard its wisdom—has by its tariff bills adjudged to be simply their due. The statutes of every State under which any three or more persons may organize a corporation of any size for any purpose, the general interpretation of the contract clause of the Constitution by which corporations are given a special stability, and the tariff laws by which American producers are authorized by law to charge fancy prices for their products, are to be regarded as expressions of public policy as truly as are the laws against trusts. To the fact that these public policies are in direct conflict is mainly due the failure of our anti-trust laws. We have, by laws which continue in America a public policy as old as special privilege, raised up powerful combinations of capital which have thus far made naught of the conflicting public policy which finds expression in the anti-trust legislation and decisions, and which seeks to protect the rights of an entire people. This is but the modern form of the old conflict between special privilege and equal opportunity.

The splendid prizes which our tariff legislation has placed within the grasp of successful combination in almost every field of industry and trade, with the way made plain and easy to stable incorporation, has led everywhere to the successful evasion of even the most stringent anti-

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trust laws. The great decisions of our courts pronouncing trusts and combinations illegal have only accelerated their progress to the goal of monopoly incorporation.

The mighty trusts of to-day are, almost without exception, simple stock corporations which directly own former competing plants. Their inflated capital stocks are listed on the exchanges and have there become part and parcel of the speculative securities of the day. Enterprises of enormous moment to the people have thus, in evasion of the law, fallen into the hands of adventurers. In some cases they will be managed so as to earn dividends; in others, those in control will find their advantage in stock manipulations. We have already had a foretaste of the possibilities of insolvencies, receiverships, and reorganizations. In view of the fact that no rights are so unprotected by law as those of minority stockholders of corporations, the great increase of such securities is not a pleasing incident of this development.

The anti-trust laws having been evaded by the promoters of the monopoly corporation, the trust in this final form stands in open violation of the spirit of the law free from the charge of technical illegality. Unless the principle of the decision of the Supreme Court of Illinois in *Distilling and Cattle Feeding Co. vs. People*,* above noted, is to receive wide application, the monopoly corporation seems for the present secure. It may be excluded from other States by further hostile legislation, but even this remedy has its limitations in the commerce clause of the Constitution. It was the purpose of that clause to

* 156 Ill. 448, 490.

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secure absolute free trade among the States; and the courts will probably not permit serious interference with interstate traffic in commodities,* even though produced by monopoly corporations. The difficulties of the problem are much increased by our numerous jurisdictions. It is by no means probable that uniform State legislation can be secured on this subject. It is clear, however, that corporations engaged in interstate commerce are subject to the control of Congress.† The act of Congress of July 2, 1890, may be followed by further legislation, as its declaration that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations," is illegal, can hardly be made to cover the compact monopoly corporation.

These special difficulties aside, some vital questions on the merits remain. What limitations are we prepared to impose on combination by way of incorporation? Are we ready to limit the kinds of business in which corporations may engage? May we confine a corporation to a given territory, or place a limitation on the amount of its business? Is there some standard of "fairness" or "reasonableness" that may be imposed for the regulation of competition? In order to steer our course between the Scylla of competition and the Charybdis of monopoly, shall we by law impose terms upon industry and fix prices for its

* *Cooper Mfg. Co. vs. Ferguson*, 113 U. S. 727; *Robbins vs. Shelby Taxing District*, 120 U. S. 489; *Minnesota vs. Barber*, 136 U. S. 313; *Breman vs. Titusville*, 153 U. S. 289.

† *United States vs. Trans-Missouri Freight Association*, 166 U. S. 290.

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products? The answers to these inquiries do not lie within the purpose of this paper. They must finally be given by the economist and the legislator. Suffice it here to say that corporations can never be above the law. As its creatures they must remain subject to the law. That they are beyond public control cannot be conceded. Whatever limitations upon their powers or activities the public welfare requires, must be imposed. Resort must be had to charter reservations of control where they exist. Neither constitutional construction nor established practice, however venerable or sustained by authority, must be permitted to interfere with their control, or even with their suppression, if called for by the public welfare. In our regard for private rights we must not perpetuate public wrongs. In order to guard vested rights we must not protect vested wrongs. The commonwealth is greater than the corporation of its creation. The Constitution has made trade free within the United States. It must not be so interpreted as to make monopoly supreme throughout a land dedicated to freedom.

The choice does not lie, as some believe, between excessive competition and uncontrolled monopoly. It is not a question whether we shall have combination; but, having it, whether the few or all shall enjoy its benefits. We cannot go back to a condition of competition mainly local and upon equal terms. We have tasted the tremendous advantages of combination with freedom from destructive competition. Such advantages, once realized, are never surrendered. The problem for solution is how to secure them for all. It is the purpose of the trust to

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seize them for the few. The struggle is always and everywhere between equal opportunity and special privilege. In such a contest the State, which is but their representative, must stand for all against some. To whatever extent the public good requires, the monopoly operation must yield to public control.

"THE CONFUSED WEST": A LITERARY FORECAST *

BARRETT WENDELL, of Harvard University, devotes a chapter of fourteen pages in his recent "Literary History of America" to "The West," the vast region lying westward from the Alleghany Mountains. The significance of these pages lies in their disclosure of how the West appears to an observer from the point of view of our oldest seat of learning. This Professor Wendell expresses in a single phrase—"The Confused West"—which he coins and again and again repeats. We who are of it and know it, while bound to admit that the West has not yet achieved an adequate literary expression, do not concede all that these words imply.

The literature that shall make lasting record of the discovery and settlement of the Mississippi Valley, that shall finally express the life and purpose of the chosen millions who have entered into it as an inheritance, is but begun. Two generations of pioneers occupied its vast area and planted throughout its length and breadth the institutions of freedom. A third generation, the first of native birth, inherited and now enjoys both land and institutions. Under these conditions we may well inquire whether there is not just at hand a great literary epoch in which the true meaning of this western life shall find

* Inaugural address as President of the Chicago Literary Club, October 7, 1901.

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adequate and lasting expression? This must be so unless the life of this great valley is to remain voiceless. Emerson, on the eve of the literary development of New England, said: "I look for the hour when that supreme Beauty which ravished the souls of those Eastern men, and chiefly of those Hebrews, and through their lips spoke oracles to all time, shall speak in the West also." May we not look for the hour when "that supreme Beauty" shall speak in our "West" also?

What materials lie ready to the hand of those who shall voice the life, the ideals, the aspirations of the West? What are the signs that they who are to weld these materials into a living literature of the soil are even now at the door?

There is no fairer land than the great region which is bounded on the north by the greatest of inland seas, on the east by the Alleghanies, on the south by the great gulf, and on the west by the Sierras. Within its mighty natural boundaries lies some of the most sublime scenery in the world. Here nature has lavished mountain and plain, forest and prairie, lake and river, in endless prodigality. Its natural resources, untold in extent, are almost as varied as are the wants of man. Its climate, ranging from temperate to semi-tropic, leaves nothing to desire. Heaven, having showered upon this land her choicest gifts, held it in reserve for a civilization worthy of such a home.

There is nothing that so impresses foreign students of American life as its newness. Dean Stanley, on returning from a visit here, said: "America is a land that still breathes the freshness of its first beginnings." Professor

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John Nichol, writing of us, says: "Orphaned of the solemn inspirations of antiquity, they gain in surface what they have lost in age; in hope what they have lost in memory. . . . They have the arena and the expectations of a continent to set against the culture and the ancestral voices of a thousand years." This is true, but it is not all the truth. Behind the newness of American civilization lies the universal mystery of prehistoric life. We may study every detail of American discovery and occupation. We can witness the tragic end of what went before. Elsewhere, only by the comparative study of institutions have the scholars of our time been able to throw even a dim light back into the remote past to gain uncertain glimpses of primitive life. Here, as John Fiske has pointed out, our fathers met and studied a stage of evolution through which civilized men long ago passed, "far more ancient and primitive than that which is depicted in the *Odyssey* or in the *Book of Genesis*. When Champlain and Frontenac met the feathered chieftains of the St. Lawrence, they talked with men of the Stone Age face to face. Phases of life that had vanished from Europe long before Rome was built survived in America long enough to be seen and studied by modern men." Nowhere else have they come into "such close and familiar contact with human life in such ancient stages of its progress." Yet a little further back is the unrent veil of prehistoric mystery.

The continuance here almost to our time of a primitive society, the origin and earlier stages of which are shrouded in a mystery even more impenetrable than that of the age of fable in which begins the history of every European

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state, gives to American life a dramatic setting of peculiar charm. That this primitive society was forever cut off from its goal when overwhelmed by advancing civilization lends to the wondrous story of American occupation a tragic fascination.

The parts of this story which tell of the settlement of the eastern slopes of the Alleghanies have supplied themes for the literature of the Atlantic States. Their best writers have thrown over every historic spot from Maine to the Carolinas the charm of imperishable literature. The development of a great national life has given to the smallest incidents of its origin a lasting significance. From our point of view Governor Bradford and William Penn were great statesmen, John Smith and Miles Standish rare soldiers, the Pequot and King Philip's Wars glorious achievements. Yet petty were the movements, the conflicts, even the hardships, of the pioneers of the Atlantic States in comparison with those of the men who discovered the West and won it to civilization. As King Philip's War is to Pontiac's conspiracy, as John Smith's travels in Virginia are to the explorations of La Salle, as the narrow limits of the Eastern settlements are to the wide reaches of Western exploration and occupation, so is the story of pioneer life on the Atlantic seaboard to the story of pioneer life in the mighty West. While aristocratic Frenchmen were exploring the valleys of the St. Lawrence and the Mississippi, democratic Englishmen were slowly laying the foundations of free institutions in the East. It required a full century and a half to create on the Eastern slopes of the Alleghanies a base for the mighty movement,

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which within two generations after the War for Independence was to plant throughout the Mississippi Valley free institutions. To-day the East is but the threshold of the continent; the Middle West is the citadel of its life. The experiences of the men who made the original States and created the nation fitted them to be the progenitors of sons who, reinforced by the choicest elements of our immigration, were to win the West and make it the decisive factor in saving the Union.

The capture of Quebec marks the climax of what Mr. Fiske aptly calls "the struggle between the machine-like socialistic despotism of New France and the free and spontaneous political vitality of New England." The victory of Wolfe "determined which kind of political seed should be sown all over the widest and richest political garden-plot left untilled in the world." The task of the men who were to sow this seed was as vast in its proportions as it was to be momentous in its consequences. Mr. Parkman describes the boundless domain which France had conquered for civilization: "an untamed continent; vast wastes, silent in primeval sleep; river, lake, and glimmering pool; wilderness oceans mingling with the sky." To occupy this splendid domain, to establish throughout its vast extent the institutions of liberty, was the splendid achievement of less than a century.

We know what manner of men led in the great movement which lies between the Treaty of Paris and the climax of the Civil War. We are beginning to suspect that these leaders were but types a little larger grown of the men whom they led; that the hardy pioneers who composed

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the army of occupation are worthy a nearer acquaintance; that the sons of the plain men who stood behind the great prophet of union may glory in an ancestry cast in heroic mould. It remains for the literature of the West that is to be to make these plain men known as those who led them are already known, to exhibit their deeds on its imperishable pages, to make their fame as lasting as the civilization which they founded.

We begin to see with Parkman and Fiske that the Mediterranean has occupied too exclusively the centre of our field of vision; "that in the New World events there is a rare and potent fascination"; that they possess "the charm of a historic past as full of romance as any chapter whatever" in human annals; that "the struggle between France and England for the soil of North America was one of the great critical moments in the career of mankind"; that in this mighty struggle between free industrial England and despotic militant France was determined the destiny of a continent. The St. Lawrence and the Mississippi Rivers, the lakes and plains of the West, have seen great causes lost and won. The banks of the Detroit and the Illinois, of Mackinac and St. Mary's, are classic ground. Along and over the noble waterways of the West the pioneers of New France passed and repassed for nearly two centuries. Explorers and soldiers, priests and traders, with tireless zeal prosecuted the designs of France in the New World. Voyages of thousands of miles by lake and river in frail canoes were common experiences of their adventurous lives.

The faults of the French scheme of civilization, of the

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institutions which they sought to plant in the virgin soil of the New World, were due to no lack of lofty qualities in individual Frenchmen. The Old World sent to the New, no finer types of men than some of those who bore the banner of France to the uttermost confines of the St. Lawrence and Mississippi valleys. The world has never witnessed greater sacrifices for country and for faith than were cheerfully made in the New World by successive generations of French explorers and missionaries. Speaking of the vast domain which these heroic men conquered for civilization and of their gigantic ambition to grasp a continent, Parkman says: "Plumed helmets gleamed in the shade of its forests, priestly vestments in its dens and fastnesses of ancient barbarism. Men steeped in antique learning, pale with the close breath of the cloister, here spent the noon and evening of their lives, ruled savage hordes with a mild, parental sway, and stood serene before the direst shapes of death. Men of courtly nurture, heirs to the polish of a far-reaching ancestry, here, with their dauntless hardihood, put to shame the boldest sons of toil."

Though Mr. Parkman has told in noble and lasting form the splendid story of French discovery and occupation, and of the critical struggle between liberty and absolutism for the possession of the New World, the great events which he chronicles, the noble men who throng his pages, will long furnish themes for historian and biographer, romancer and poet. Detroit, Sault Ste. Marie, Michilimacinac, St. Joseph, Checagou, Fort St. Louis, and Kaskaskia are names of growing historic interest. The banks of the lake straits, of the Illinois and the Mississippi

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Rivers, will ever "bloom for us with flowers of romance." The fame of heroic explorers, devout priests, and tireless traders will long be crescent among those who dwell beneath Western skies. Samuel de Champlain, Jean Nicolle, Louis Joliet, Jacques Marquette, Gabriel Lalemant, Jean de Brebeuf, Henri de Tonty, and, last and greatest of all, "that man against whom fate sickened of contending, the mighty and masterful La Salle,"—these hold high places among enduring names in the history of the West. They and such as they laid the foundations of our Western life. Their activities, in the main obscure at the time, were of great and lasting influence. It was their rare fortune to begin a new civilization, to be so placed that their every act was of vital import to the future of the race. Upon their toils and their conflicts, their defeats and their victories, hung issues of momentous consequence to generations yet unborn. They sought to master a continent for feudalism, for monarchy, for Rome; they won it for democracy, for the freest of institutions. They conquered a barbarous wilderness, intending to create a new France; they made preparation for a better England. They wrought for absolutism; they achieved for liberty.

The story of French dominion in the valleys of the St. Lawrence and the Mississippi reveals but the beginning of Western civilization. Even greater events were to follow in quick succession. The defeat of the French meant early ruin to the natives of the soil. While the representatives of French absolutism regretfully lingered about the Great Lakes and along the noble waterways of the West to mourn a lost empire, their savage allies united under the

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greatest of red men to drive the conquerors beyond the Alleghanies from whence they came. The mighty Pontiac with consummate skill marshalled his fierce warriors from many scattered tribes. Then, with marvelous cunning, the wily savage by concerted action surprised and massacred the garrisons of many of the Western posts. Then followed that most extraordinary of Indian military exploits, the siege of Detroit; the failure of expected French support; the retirement of the French to the Spanish territory west of the Mississippi, and the settlement of St. Louis; the collapse of the vast conspiracy; Pontiac's submission to Sir William Johnson, followed by a few years of fitful peace; the assassination of the great chieftain at Cahokia by an Indian of the Illinois, bribed to the deed with a barrel of rum; and the gathering of the tribes from far and near to revenge his death, resulting in the extermination of the Illinois. Parkman tells us "that over the grave of Pontiac more blood was poured out in atonement than flowed from the veins of the slaughtered heroes on the corpse of Patroclus." Such in merest outline is a story of rare and tragic interest, one that may yet become the theme of an epic poem.

The echoes of French authority had but just died away along the great waterways and through the untamed forests of New France, the representatives of the conqueror had scarcely become accustomed to scenes long dear to Champlain and La Salle and Frontenac, when the American colonies rose in revolt, demanding their independence. The victory of England over France in their long struggle for supremacy in the New World had pre-

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pared the way for this revolt and left France willing to lend her aid. It had likewise given to England, Quebec, and Montreal, Canada and the lower St. Lawrence, in lieu of Boston and New York, the Atlantic seaboard and the Ohio valley, so soon to be forever lost.

The great events of the Revolution in the East were of such momentous consequences that until recently the importance of collateral events in the West was largely overlooked. The expedition led by George Rogers Clark, the capture of Cahokia and Kaskaskia, the winter marches across Illinois resulting in the capture of Vincennes and St. Joseph, won for the confederated colonies the Northwest Territory and made it possible for Franklin and Jay and Adams, in fixing the terms of peace, to draw the northern and western boundaries of the new nation through the Great Lakes, along the Grand Portage from Lake Superior to the sources of the Mississippi, and thence through the centre of that great river.

The Treaty of Paris marks the beginning of the great movement for the settlement of the West. This was the opportunity of the pioneers. How well they improved it is subject matter for a great chapter in the story of our national development. Within two-thirds of a century they occupied the vast region still called the West, planting everywhere in its virgin soil the seeds of civilization. The early years of this rapid movement were marked by destructive Indian outbreaks in many places, finally resulting in General Wayne's treaty of 1795 with all the tribes of the Northwest Territory. By this great peace pact the United States recognized the title of the Indians to

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nearly all the land of the Northwest Territory; also their right to share jurisdiction with the United States over the territory, including the Great Lakes and other waterways. It is good to recall that by subsequent treaties the Indian title to the lands of the territory were gradually extinguished by purchase. Whatever was done elsewhere, here the rights of the Indians were in a measure respected.

The ordinance of 1787 had in the meantime been enacted by the Congress of the Confederation. By this great charter of government for the Northwest Territory provision was made for freedom of religion, inviolability of contracts, fair and just treatment of the Indians, for the continuance in the union of the States to be created, for the encouragement of schools, and for the free navigation of the waters and portages of the territory. Above all it provided for the freedom of all persons within the territory excepting only fugitive slaves. Thus was the splendid domain of the Northwest Territory forever dedicated to freedom and education.

The great events of the last century in the development of the West are too well known to require recital here. They include the occupation of the Mississippi valley, the large share of the West in the Civil War, and the rapid growth of a great democratic society. Many of these events are too near at hand to be seen in their true perspective. It must suffice here to say that they will ever occupy large space in the record of American achievement.

Such is the rich store of materials for a literature of the West. From this storehouse will come themes for every form of literary art. Here the deep mystery of pre-

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historic life meets modern men face to face. Upon a wide arena appear scenes strange and varied. Across it pass and repass vividly contrasted characters. Shadowy forms glide here and there on romantic errands. Heroic figures, representatives of France at the height of Bourbon power, long dominate the scene. Devoted priests bear incredible hardships that they may touch with the mystic drop the dying babes of savage mothers. Fearless explorers watched by jealous natives traverse in swift canoes the clear waters of mighty rivers and vast inland seas. Dauntless soldiers and wily savages engage in deadly combat. The forces of liberty and absolutism in alliance with barbarous hosts contend for a continent. Hardy pioneers plant in the garden of the New World the seeds of civilization. Upon a stage vast and varied, amid scenes old and yet new, men chosen from many lands have met the English language, the common law, and the Constitution of the United States. Fused by these mighty forces into a homogeneous people they here hopefully face the great problems of modern life.

Why did a literary field thus wide and fertile remain so long untilled? Why may a literary critic looking over this great field from the ramparts of Harvard University still with some appearance of truth pronounce it "confused"? The answer is not far to seek. The men of the West have exhausted their energies in performing active tasks. They "have had to act their Iliad, and they have not yet had time to sing it." While Hawthorne, Emerson, and Lowell were creating the literature of New England, these men were laying broad the foundations of civilization through-

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out the West. Their pursuits were active rather than intellectual; their minds were practical rather than creative. Then, too, until our time many if not most of the trained men of the West were born and bred elsewhere. Even those of native birth were mainly educated in the East. While men so transplanted or trained may write, they are not likely to produce a literature of the soil. Had Hawthorne and Lowell been born and bred in England and then transplanted as mature men, they might have made equally great contributions to literature. They could not have written "The Scarlet Letter" and "The Biglow Papers." Had Mark Twain first seen the Mississippi River as a mature man, "Huckleberry Finn" would have remained unwritten.

The time has but just arrived in which the greater number of the highly trained men of the West are of native birth. Its institutions of higher learning, its libraries, and other facilities have but recently entered upon a real competition with those of the East. If the trained men of the West have been mainly transplanted, if its intellectual life has been barren and unproductive from the standpoint of art, there is no reason why these conditions should continue. Rich in material for culture, with a population produced by the fusing of the best elements of many lands, with large facilities for training men, the West is now for the first time producing in large numbers those able worthily to interpret her inner life and purpose. If that life be not hopelessly shallow and frivolous, if that purpose be not wholly material and sordid, if that life and purpose be really great and earnest, they must in the fulness of

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time find expression in words that shall live because of their lasting value to the race.

The signs are not wanting that the "supreme Beauty" of Emerson's vision is about "to speak in the West also." Already here and there the children of the West are giving worthy expression to the varied phases of a life which is not in fact so confused as it may seem from afar. A school, at least a group, of writers is growing up among us. The richness of the literary materials which are ready to their hand, is becoming clear to a great constituency. All the conditions point to a period of literary activity in the West that may prove to be as important as that which a generation ago gave to us the literature of New England.

It has required time here to fuse the diverse elements of many lands into a homogeneous society. This great miracle has now been wrought. The men of the West have learned to think and to act in the terms of a common language. That language is at once the language of liberty and of opportunity. It is here the common speech of millions of men who have already achieved much, to whom achievement is easy, who hopefully face a future of splendid certainties and untold possibilities. If, as Mr. Wendell defines it, "literature is the lasting expression in words of the meaning of life," surely the life of the West is great enough, both in its achievements and in its hopes, to require a great literature to give it adequate and lasting expression.

There are of course difficulties to be overcome. Some of these are new and peculiar to our time, if not to the West. We have lately achieved what may be called a

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democratization of many things formerly reserved for the few. This, for at least the moment, threatens to overwhelm all our standards of art. What we call "yellow journalism" is but evidence that the newspaper, once the luxury of the few, has become the necessity of all: There are not fewer serious publications for those capable of appreciating them. There are more sensational publications for the many who until yesterday had none; and who are not yet trained to appreciate only that which is good. The consumers of literature have enormously multiplied. The average taste of readers is of course lower than when only the cultured read. This reacts on those who write. Form for the time being is less essential to success. The prize is to him who ministers to each passing craze. Wide popularity and large returns come to writers who have never learned that "works done least rapidly are most cherished." Thus a democratic literature runs the risk of becoming lawless, irreverent, transient. From this fate those who wrote were for a time kept by a tradition formed when those who read were only the cultured few. Now that the crowd reads, it must acquire taste if those who write are to observe its requirements. If our literature is to be other than a mere superficial and fleeting expression in ill-chosen words of the meaning of the life we live, the crowd must acquire an appreciation of form, of serious literary performance.

The West is of all great societies the most democratic that the world has seen. Here the aristocratic spirit has never held sway. Those who occupied this new land and reenacted here the Bill of Rights, substituted the ideal

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of equality for that of aristocracy. If democracy is to be charged with the defects of a society thus created, it is to be credited with its virtues. There must be some energy for good in a society which, at the close of its pioneer period could give to the world an Abraham Lincoln as its typical man. There must be something above the commonplace in a society which, at the close of its first century could express its finer instincts in the Columbian Exposition.

It is the glory of this Western democracy that even Abraham Lincoln did not stand alone. He claimed no distinction of birth. He scorned the absurd pretence of divine right. He was content to represent and serve a free people.

" His was no lonely mountain-peak of mind,
Thrusting to thin air o'er our cloudy bars,
A sea-mark now, now lost in vapors blind;
Broad prairie rather, genial, level-lined,
Fruitful and friendly for all human kind,
Yet also nigh to heaven and loved of loftiest stars.
Nothing of Europe here."

The men of the West, who at the call of this First American went forth, were of the same type. He and they, with their brethren of the East, went even into death to preserve the Union, to destroy privilege, to make equality of rights—the ideal of the Declaration—the achievement of American democracy. A great society, under no authority save the united will of those who composed it, rose to a sublime opportunity. The West stood forth in its true character. It was seen to be other than a mere collection of some millions of commonplace human

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beings without inspiration or leadership. It appeared a mighty people dominated by moral purposes, led by the man who embodied its spirit.

He who has not yet fathomed the deep injustice of special privilege, the supreme selfishness of aristocracy, the brazen pretence of divine right, is not qualified to write the literature of a free people. They who are to interpret the West must think and write in the terms of democracy. They must live the life, share the spirit, express the purpose of a democratic society. They must have insight to find in the crude life of the pioneer the charm of splendid possibilities, in the rough experiences of the frontier the preparation for public order, in the philistinism of the crowd the beginnings of general culture. Men thus equipped to create a literature of the West face an alluring task.

It is not enough that the soil on which we live has witnessed great deeds; that explorer and priest and trader have glorified it with sublime courage; that soldier and pioneer and statesman have made it the base of a mighty republic. It is not enough that it has become the home of the most free of great peoples, of vast industries, of a mighty commerce, of noble seats of learning, of worthy temples of religion; that it has entered upon a splendid inheritance of science, of literature, of art. It is not enough that its achievements have made it great in the eyes of the world. Its ordinary citizens must realize and feel something of the value of what has made it great. From the soil must come the influences which shall enrich and elevate the common life.

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